Supreme Court of the United States

OCTOBER TERM, 1966

No. 647

LOUIS BOSTICK, PETITIONER

vs.

SOUTH CAROLINA, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

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[fol. 1]

IN THE SUPREME COURT OF SOUTH CAROLINA

APPEAL FROM RICHLAND COUNTY

HONORABLE JOHN GRIMBALL, JUDGE

LOUIS BOSTIC, APPELLANT

against

STATE OF SOUTH CAROLINA and ELLIS C. MACDOUGALL, Director, South Carolina Board of Correction, RESPONDENTS

STATEMENT

Appellant has been convicted of the offense of murder and sentenced to death. The judgment and sentence were affirmed by the Supreme Court of South Carolina on July 10, 1963. *State* v. *Bostic*, 243 S. C. 14, 131 S.E. (2d) 841. Thereafter, appellant filed a Petition for Writ of Habeas Corpus with Honorable John Grimball, Resident Judge, Fifth Judicial Circuit. The sentence of death was thereupon stayed by Order of the Supreme Court of South Carolina until further Order of the Court. On July 3, 1964, Judge Grimball entered an Order, denying the Petition for Writ of Habeas Corpus upon the grounds set forth in the Petition and upon the additional ground orally argued at the Hearing which said ground is set forth in Judge Grimball's Order. Notice of Intention to Appeal was duly served upon the Attorney General of South Carolina.

[fol. 2]

IN THE FIFTH JUDICIAL CIRCUIT COURT

PETITION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE JOHN GRIMBALL, JUDGE FIFTH JUDICIAL CIRCUIT:

Petitioner, Lewis Bostic, respectfully shows to the Court:

1.

Petitioner is a resident of the County of Jasper, State of South Carolina; and is a member of the Negro race.

2.

Petitioner is now actually, unjustly and unlawfully imprisoned and restrained of his liberty and detained under color of the authority of the State of South Carolina in the custody of Ellis C. MacDougall, Director of the South Carolina State Board of Corrections at the South Carolina State Penitentiary at 1515 Gist Street, Columbia, South Carolina.

3.

Petitioner is held prisoner by the authorities of the State of South Carolina, pursuant to a judgment and sentence of the Court of General Sessions of Jasper County, South Carolina, whereby he was convicted of the offense of murder and sentenced to death; that the said judgment and sentence were rendered by the Honorable Bruce Littlejohn, Presiding Judge; that said judgment and conviction have been affirmed by the Supreme Court of the State of South Carolina.

4.

That the facts and circumstances preceding the arrest and conviction of petitioner are as follows:

A. On or about January 18, 1962, C. W. Floyd, then Sheriff of Jasper County, South Carolina, was killed. Thereafter, petitioner was taken into custody by a large number of armed men and by them restrained of his lib-

erty. Said group of men were joined by other persons, some of whom were law enforcement officers, who took [fol. 3] petitioner to the place in Jasper County where the said C. W. Floyd allegedly was shot to death, approximately one mile South of Pineland, South Carolina. Petitioner was then taken to Tillman and then to Ridgeland, South Carolina, in an automobile procession made up of a large number of armed persons.

B. Petitioner was interrogated at length by persons in authority in the presence of a large number of persons; that no member of his family was then present and no friend or lawyer was present. That petitioner was not informed or advised of his right to counsel at that time nor of his right to remain silent and refrain from making any statement. Nothwithstanding the fact that there are several magistrates located in Jasper County near the place petitioner was arrested, he was not taken to either of said magistrates and charged with the commission of any offense but was carried in an automobile which was followed by a large procession of other automobiles a distance of more than one hundred miles away, to the City of Columbia, South Carolina. Under the above described circumstances, while under apprehension for his personal safety, petitioner made certain oral admissions. Thereafter, while still fearful for his personal safety, petitioner was presuaded to sign several written statements. Petitioner, at the time of his arrest as aforesaid, was only seventeen years of age; he had no experience in the techniques of criminal investigation and did not know of his right to remain silent, and to demand a hearing at that time as to the cause of his detention.

C. An indictment was returned by the Grand Jury of Jasper County at the February, 1962 Term of the Court of General Sessions for Jasper County, Charging petitioner with the offense of murder.

Petitioner is informed and believes that said Grand [fol. 4] Jury was drawn and convened in such a manner as to systematically exclude therefrom members of the Negro race, of which race petitioner is a member and petitioner never waived his right to be tried upon an indictment returned by a Grand Jury from which quilified

members of his race were not systematically excluded by reason of their race or color.

D. Petitioner was tried and was found guilty of the offense of murder in the February, 1962 Term of the Court of General Sessions for Jasper County by a petit jury which was drawn and convened in such a manner as to systematically exclude therefrom members of the Negro race, of which race petitioner is a member and petitioner did not waive his right to be tried by a petit jury from which qualified members of his race were not systematically excluded by reason of their race or color.

E. During the trial of the cause, the written confessions set forth above in paragraph 4-B were admitted as evidence.

F. That both at the time of petitioner's apprehension and at the time of his trial the surrounding area was so inflamed and intensed at the crime petitioner was alleged to have committed that it was impossible for petitioner to receive a fair and impartial trial as is guaranteed by Article I, Section 18, Constitution of the State of South Carolina and by the Fourteenth Amendment to the Constitution of the United States.

5.

Petitioner is informed and believes that the indictment, trial, conviction and sentence of death imposed upon him herein are unconstitutional, and therefore null and void, in that:

A. The confessions admitted in evidence against peti-
[fol. 5] tioner were not freely and voluntarily given and their use as evidence violated petitioner's right under the Constitution of the State of South Carolina and under the Fourteenth Amendment to the Constitution of the United States.

B. The Grand Jury which returned the indictment against petitioner was illegally constituted in that members of the Negro race are systematically excluded therefrom in violation of petitioner's right to due process of law under the Fourteenth Amendment to the United States Constitution and in violation of petitioner's rights under

Article I, Sections 5 and 18, Constitution of the State of South Carolina.

C. The petit jury which tried and convicted petitioner was illegally constituted in that members of the Negro race are systematically excluded therefrom in violation of petitioner's right to due process of law under the Fourteenth Amendment to the United States Constitution and in violation of petitioner's rights under Article I, Sections 5 and 18, Constitution of the State of South Carolina.

D. The atmosphere in which petitioner was tried and convicted was so tense, prejudice against petitioner that he could not and did not receive a fair and impartial trial in violation of Article I, Sections 5 and 18, Constitution of the State of South Carolina and of the Fourteenth Amendment to the United States Constitution.

6.

None of the aforementioned constitutional rights were asserted at petitioner's trial and were not waived by petitioner and no previous application has been made for the writ herein prayed.

WHEREFORE, petitioner prays that a writ of habeas corpus issue, directed to the said Ellis C. MacDougall, [fol. 6] Director of the South Carolina State Board of Corrections, commanding him to have the body of your petitioner, together with the cause of such imprisonment and restraint before this Court.

/s/

CHARLES E. WASHINGTON
MATTHEW J. PERRY
LINCOLN C. JENKINS, JR.

Attorneys for Petitioner

November, , 1963.

[Duly Sworn to by Lewis Bostic
Jurat Omitted in Printing]

[fol. 7]

IN THE FIFTH JUDICIAL CIRCUIT COURT

PROCEEDING ON HABEAS CORPUS

APPEARANCES:

For the Petitioner: Charles E. Washington, Esq., Beaufort, S.C., Messrs. Matthew J. Perry and Hemphill Pride, II., Columbia, S. C.

For the Respondents: Edward B. Latimer, Esq., Assistant Attorney General Everett N. Brandon and Randolph Murdaugh, Esq., Solicitor, 14th Circuit.

(His Honor, Judge John Grimball, presiding)
(Hearing on Petition for Writ of Habeas Corpus held on November 18th, 1963.)

COLLOQUY BETWEEN COURT AND COUNSEL

THE COURT: Gentlemen, we have this morning a Petition under a Writ of Habeas corpus, the Writ issued by this Court on November 7, 1963, pursuant to a petition filed with this Court on November 6, 1963. The regular term of the Court of Common Pleas for the Fifth Judicial Circuit is being held at this time, Judge Clarence Singletary, presiding. Therefore, the courtroom of the Court of Common Pleas is occupied. There is also a regular term of the Richland County Court which is now being held in the Richland County Courtroom. Honorable John C. DuPre, Judge of the Juvenile Domestic Relations Court of Richland County has kindly agreed to permit us to use this courtroom and I want to say at the outset that this Court appreciates Judge DuPre's kindness in permitting us to do so. Now in the Petition for the Writ of Habeas Corpus as I read it, there is a Summation of the Petitioner's grounds for his release, commencing on the top of page four under paragraph five. Now will his counsel state whether that is correct or not?

MR. PERRY: That is correct, Your Honor.

THE COURT: Now are there any further grounds that you wish to present to the Court on behalf of the [fol. 8] Petitioner? Under this Petition for the issuance of this Writ, if there are I will ask you to so state at this time. If there are not, I will ask you to state that these are all of the grounds that you wish to rest your Petition.

MR. PERRY: May it please the Court, I am advised by my associate Mr. Washington, of Beaufort, that these are all of the grounds which are now perceived by the Petitioner, and of course he and I have of course searched this matter very carefully and do not now perceive of any ground which is not set forth in the Petition. We would like to say that if something should develop, either during these proceedings or thereafter, we would not like to feel that we would be precluded from amending this Petition at some appropriate time, at such time as such further ground should develop.

THE COURT: Well, I see your point very clarely concerning matters that may arise during this hearing, based on possible exceptions that you may take to rulings of the Court, based on other matters that arise during the procedure of this trial, but the Court is interested in two things, First, in giving the Petitioner every fair chance to present his case but the Court feels that it is also incumbent upon the Petitioner through his counsel, to present to the Court at this time, since we are all here, all of the grounds that they have for this Petition. In other words, we can't have hearing after hearing after hearing. We are all here together now, you have presented certain grounds in your Petition, I want to give you at this time an opportunity if you wish, to amend the Petition to add any additional grounds that you now feel that the Petitioner may have.

MR. PERRY: May I again confer with my associates?

[fol. 9] THE COURT: Yes, sir.

MR. WASHINGTON: At this time the Petitioner desires to add as a further ground for complaint, the allegation that the Grand and Petit Juries were illegally constituted in that the jury box did not contain the Statutory required number of male electors.

THE COURT: All right sir, gentlemen, do you understand that ground?

MR. BRANDON: Yes sir.

THE COURT: We will proceed of course on the Petition as here presented to the Court and if the State is prepared and able to meet that particular ground, you may do so. If you are not prepared to meet that ground, of course you may move to the Court for a further hearing on the matter and I'll grant it in the immediate future.

MR. MURDAUGH: If your Honor please, we are prepared to go ahead. However, we would like to amend the Return by setting up that in the event the statutory number of jurors was not in the box, that that is a mere irregularity and is not a matter to come up under a Habeas Corpus proceeding.

THE COURT: And the irregularity, if you feel it is to be taken, should have been taken at the trial?

MR. MURDAUGH: Yes sir.

THE COURT: Do you gentlemen understand the position of the State?

MR. PERRY: Yes sir.

MR. MURDAUGH: And it was not raised at any time until this hearing, not on an Appeal.

THE COURT: All right gentlemen, as I see the proceedings in this particular case, the burden is now on the [fol. 10] State to show that the Petitioner Louis Bostic, is in proper custody.

MR. MURDAUGH: Can we call your Honor's attention to the fact that in the third paragraph of the Petition it alleges that the Petitioner has been convicted of the crime of murder and is sentenced to death and is being held pursuant to such sentence, in the judgment of the Court. I am trying to shorten the case by calling this to your Honor's attention.

THE COURT: Solicitor, I understand your position perfectly. At the same time it strikes me that although that allegation is in the Petition, the State should present such formal documents and testimony as it has to show that that is a fact in order to complete the record. I think that would be a proper move, unless the attorneys for the Petitioner wish to—but I don't think its a good

procedure in a case of this kind, not to move forward in that manner.

MR. MURDAUGH: I was just interested in saving time, your Honor.

THE COURT: I know you are and I see your point.

MR. LATIMER: By agreement of defense counsel, we will introduce photo-copies of various Commitment and Stay Order without the necessity of having to put up witnesses.

THE COURT: Let the Reporter mark those in evidence and I think you might make a statement as to what those Orders are.

MR. LATIMER: We have the Commitment of the Clerk of Court for Jasper County dated March 1, 1962, the official record of the Penitentiary concerning the Commitment, the Order Staying the execution, dated April 25, 1962 by Judge Bruce Littlejohn, the Appeal to the State Supreme Court dated July 22, 1963, a letter from the Clerk of the Supreme Court dated August 14, 1963, Opinion No. 5003 of the State Supreme Court dated August 14, 1963.

[fol. 11] THE COURT: Doing what?

MR. LATIMER: "The Stay of Execution of the Sentence of Death shall continue until the further Order ot this Court," and a statement from the Clerk, Frances Smith, of the State Supreme Court dated October 17, 1963, Order of all Justices of the State Supreme Court dated August 17, 1963, a letter from the Clerk of the Supreme Court dated November 7, 1963, an Order of Chief Justice Taylor of the State Supreme Court dated November 7, 1963, wherein it is ordered that "The Order of this Court dated October 17, 1963, is hereby Stayed until the further Order of this Court".

(Documents marked Exhibit "A", offered and received in evidence)

MR. LATIMER: Your Honor, with consent of Defense counsel I would like to put in a Consent Order of the Supreme Court.

THE COURT: Let the Reporter mark it in evidence.

(Opinion No. 18095 marked Exhibit "B", offered and received in evidence)

THE COURT: I would like to ask the attorneys for the Petitioner, these documents have been placed in evidence by agreement, will you admit, without prejudice to the grounds of your Petition for a Writ in Court today, that these formal documents disclose that the Petitioner is in legal custody in the State Penitentiary?

MR. PERRY: As your Honor has indicated, without prejudice to the grounds which have been asserted in the Petition for the Writ of Habeas Corpus, we do admit the validity of these documents.

THE COURT: The only purpose of such admission from the Petitioner would be to place the burden of going forth with the evidence, on the Petitioner, now that the State has introduced these documents in evidence, disclosing that the formal documents showing his custody, are in order. Is that clear?

[fol. 12] MR. PERRY: Yes sir, that is clear.

MR. WASHINGTON: Your Honor, at this time Petitioner will call Mr. Robert Bryant.

MR. ROBERT BRYANT, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. WASHINGTON:

Q. Mr. Bryant, your name is Robert Bryant Senior?
A. Correct.
Q. And you are a resident of what County?
A. Jasper County.
Q. What town?
A. Robertsville Township.
Q. Is that in the vicinity of Pineland, S. C.?
A. Correct.
Q. How long have you resided in that area, sir?
A. Oh, all of my life, I would consider, with the exception of about ten years.
Q. I call your attention, Mr. Bryant, to the 18th day of January, 1962. Do you recall anything of unusual occurrence happening that you were aware of on that date, sir?

A. Well, to begin with, may I say this? I know, with reference to C. W. Floyd, Jasper County Sheriff.

Q. Now, Mr. Bryant, would you describe your first knowledge of the incident in which Mr. Floyd was killed?

A. Yes, to my best knowledge, that evening it was raining and I'm saying about the time of the happening I was something like a short mile away from there.

Q. Did you go to the place where this incident occurred, sir?

[fol. 13] A. Yes, sir.

Q. And would you describe for us what occurred when you arrived on the scene?

A. Okay. As I foresaid, I was something like a short mile away from the happening and I was summoned by one of my brothers-in law, Mr. Ulmer, Highway Patrolman, with this understanding, that Mr. C. W. Floyd was shot in the woods.

Q. And did you go to the scene?

A. Yes, sir.

Q. And tell me what happened when you got to the scene.

A. Well, I went down to there on a truck, you might say a pulpwood truck, and the truck stopped just about, I'd say, a hundred feet from Mr. Floyd where he was laying, and then I gets off the truck and just before I got off of the truck I think I recognized Mr. Randall appealing for help, or Mr. Ulmer, but I knew there were two white men there at Mr. Floyd before I got there.

Q. Did you render assistance?

A. Yes, sir.

Q. As a result of your assistance and that of the others, what was done with Mr. Floyd?

A. Well, when I first got to Mr. Floyd where he was laying—

Q. Did they move him from the scene after you got there?

A. Yes, sir, because I insisted in moving him.

Q. And after he was removed, did you stay at the scene, sir?

A. Yes, sir, for about—well, I'll say better than an hour.

Q. Now would you please describe what happened after the ambulance left?

A. Well, to my best acknowledge, I think it was—well, I can say there were about four or five patrol cars at [fol. 14] that time together and the law enforcement man with the bloodhounds.

Q. Can you estimate for us the approximate number of persons who gathered in that area within this short period of time?

A. A short period of time, if I gave a correct answer, it would be something close to 25, right immediately.

Q. And were any of these persons persons other than law enforcement officers?

A. Well, yes.

Q. And were any of these persons that were on the scene, including law enforcement officers, armed?

A. Yes, sir.

Q. And after they gathered on the scene, would you then describe that was done?

A. Well, at first after gathering there, they put out the bloodhounds, three hounds was there. They put two of them out in the woods opposite where Mr. Floyd was shot. One of the hounds picked up the trail and went running and one came back to where we were standing.

Q. Did you hear any of these officers receive or give any orders with reference to what was to be done?

A. Well, some of them said—we didn't know what was coming out of the bush, but those that had guns, they said it happened near 601 on the highway and we were standing there and they gave orders whoever crossed that highway to down him.

Q. To down him?

A. To shoot, yes.

Q. Now you stayed right in that area for approximately an hour?

A. Yes, sir.

Q. In the immediate area did you observe any other [fol. 15] activity going on?

A. Well, the road was all blocked from north to south and I'll say from east to west.

Q. After you left this place, where did you go then, sir?

A. At that time I went home.

Q. And you stayed at home after that?

A. Yes, sir.

Q. Did you learn anything further that night as to the outcome of what you had observed, sir?

A. I didn't know anything until around about 8:00 o'clock the next morning, which was Friday.

Q. Mr. Bryant, you knew Mr. Floyd, did you not?

A. Yes, sir.

Q. And you knew he had been Sheriff of the county for a number of years?

A. Yes, sir.

Q. In your opinion, was he a well liked officer?

A. Yes, sir. I don't want to speak too fast, but I mean among the colored people, to make it clear.

Q. These people who were at the scene at the time this incident occurred, what was the reaction of the persons who were there? Did they take action that led you to believe they were determined to apprehend this person?

A. Yes, sir, I'm saying this, after Mr. Floyd was carried to the hospital, they started blocking the road and they befan searching the woods.

Q. And after they proceeded to go about the business of going into the woods, did any other people arrive on the scene while you were there?

[fol. 16] A. Yes, sir.

Q. Would you say that this was a general thing, that they continued to come upon the scene during the time you were there?

A. Yes, sir.

Q. And when they got to the scene, what generally did they do?

A. Well, some of them had a gun. I could hear some of them calling back to the home, to his wife, to where the shotgums and the shells and all was.

Q. They were looking for weapons?

A. Looking for weapons.

Q. Did you observe as they arrived upon the scene, any officer deputizing these individuals or swearing them in?

A. No, sir, I can't recall that to mind.

Q. But you did recall people going and leaving with weapons?

A. Yes.

Q. Now, Mr. Bryant, were you in attendance during any part of the trial of Louis Bostic?

A. Yes, a part of it, sir.

Q. When did you attend this trial?

A. It was on Thursday. When I got there, I would say it was late. The courthouse was crowded at the time being, but shortly afterwards I had a chance to go in and sit in the courtroom.

Q. And were people standing outside the courtroom?

A. Some of them were, yes.

Q. Did you recognize any words that were being said by individuals who were standing around outside the courtroom, sir?

A. I can't remember now.

Q. Mr. Bryant, at the time that this search began, [fol. 17] would it be your opinion, or do you have an opinion as to whether or not the atmosphere was one of calm or tension?

MR. MURDAUGH: If Your Honor please, I think he should testify to the facts of what happened and not what he thought or made up in his own mind. That calls for a conclusion.

THE COURT: I'll let him state what he observed. Go ahead, sir.

A. At that particular time and place, I could nor hear anything else because it was disturbed, I might say, by some going this way and some going the other. What I mean, is to see what happened. Those that could get in around the roadblock.

Q. At the time he was apprehended?

A. Yes.

Q. What about the time of the trial? What was your observation as to the atmosphere of the people in attendance?

A. Well, I couldn't take in nothing, but it was calm at the time, at the trial.

Q. Now, Mr. Bryant, is it your usual practice over the past—have you been in regular attendance at the Court of General Sessions while they have been held for the past seven or eight years?

A. Yes, off and on, sir.

Q. And approximately how often do you attend these proceedings?

A. Well, in my judgment, at least once every year.

Q Do you know how many terms of court they usually have for General Sessions, the big court?

A. I couldn't imagine but one term of the big court.

Q. And within the past seven or eight years, it is your testimony that you have been to at least seven or eight terms?

[fol. 18] A. Yes.

Q. Have you had an opportunity to observe those persons who were serving on the Grand Jury of Jasper County?

A. Well, I don't know them personally, but I knew some of them by face.

Q. Could you observe the difference between the Negroes and the white persons who served?

A. Yes, sir.

Q. I'll ask you whether you have ever observed during the time of your attendance at these trials a Negro serving on the Grand Jury of the General Sessions Court of Jasper County?

A. I couldn't count no more than one.

Q. And what time did you observe this juror serving?

A. That's been about two or three years now since one served on the Grand Jury.

Q. Do you know what year this was, sir?

A. Well, in 1960, around about then.

Q. And have you had an opportunity to observe persons insofar as their color was concerned who served on the Petit Jury panels?

A. I couldn't count any Negro on the panel jury.

CROSS EXAMINATION

BY MR. MURDAUGH:

Q. You are quite familiar with Louis Bostic?

A. Yes, sir.

Q. You visited him and brought his father up to the penitentiary a number of times to see him?

A. I haven't brought his father to the penitentiary any time.

[fol. 19] Q. He never was hurt or harmed in this investigation, was he?

A. Not as I know of.

Q. And from what you have said, the atmosphere both out there and at the trial was calm, and you say, too, that you had never seen a colored fellow on the Petit Jury?

THE COURT: Let him answer the first question.

(Re-address that.)

Q. I understood you to say that the atmosphere both at the scene where the Sheriff was killed, there was nothing unusual about that, was there? Every time anybody gets killed, you have a crowd, whether it be a colored or white man, don't you?

A. Well, that's quite natural it would draw an excitement.

Q. Wasn't anything unusual about that crowd down there, was it?

A. No, not as I know of at the time.

Q. And at the trial there was nothing unusual about it, was there? You got a seat there, didn't you?

A. I got a seat there.

Q. And the Judge wouldn't let anybody stand in the courtroom, would he?

A. Correct.

Q. And there was always a crowd outside the courtroom in Ridgeland because you have—

A. Yes.

Q. And you said it was calm down there?

A. In the courtroom when I was there.

Q. Now did you know there was a colored man on the Grand Grand Jury that returned a true bill against Louis Bostic?

A. No, sir.

[fol. 20] Q. Did you know there were two colored men on the Petit Jury? On the panel, I'm talking about?

A. No, sir.

Q. The lawyers who represented Louis Bostic at the trial did a good job fighting for him didn't they? You were there, weren't you?

A. I was there.

MR. WASHINGTON: Your Honor, I object to the question. It certainly calls for a conclusion of the witness.

THE COURT: Well, he was there and he observed these things and has testified to a considerable number of other observations. I'll permit him to state, if he can, what his opinion is.

THE COURT: Do you have an opinion as to the manner in which the attorneys for Louise Bostic represented him at his trial?

A. Could you speak again?

Q. Do you have an opinion as to the manner in which the lawyers representing Louis Bostic represented him at the trial?

A. Well, no, I have no opinion of the representative of this said named.

THE COURT: All right, he's got no opinion on that.

Q. (By Mr. Murdaugh) You say you saw Sheriff Raymond who was Deputy then at the scene before they caught Louis?

A. I don't want to mix names now, but I do know Mr. Ulmer was there and I think it was Mr. Raymond, but I can say this: two Negroes and two white men put Mr. Floyd in the ambulance, myself and another one.

Q. As a matter of fact, there were as many colored people looking for the person who shot the Sheriff Floyd as there were white people because you fellows loved Sheriff Floyd, didn't you?

[fol. 21] A. Yes, sir.

Q. And wasn't there as many colored people or Negroes looking for Sheriff Floyd's killer or the person who shot him as there were white people, wasn't there?

A. Well, I won't say that because I don't think they all really knowed what had happened at that time.

Q. Now you say you attended court on Thursday?

A. On Thursday.

Q. Did you know the trial was over and the fellow had already been sentenced to be electrocuted and taken to Columbia when Thursday came?

A. Yes, I was back there Friday about the time they were reading out the sentence.

Q. You didn't understand my question. This man was tried on Tuesday, found guilty Tuesday, convicted and sentenced on Wednesday, so you were not even at the trial, were you?

A. I beg your pardon, but I sure was there, Mister, Your Honor, when they sentenced him on the 11th of May. I just walked in the courthouse when they began reading out the verdict.

Q. So that was on Tuesday or Wednesday?

A. I just couldn't designate what day, but I know I was there.

MR. LAWRENCE BOSTIC, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. WASHINGTON:

Q. Your name is Lawrence Bostic?

A. Yes, sir.

Q. And you are the father of Louis Bostic, the Petitioner here?

[fol. 22] A. Yes, sir.

Q. And calling your attention to the day of January 18, 1962, I ask you where were you on that afternoon?

A. I was to the house when Mr. Floyd's brother and a colored man came up there, Johnny Marvin, and told me Mr. Floyd got shot and he told me if I seen anybody to let him know. Now I asked him where about and he says down the highway and he asked me to bring the tractor down and pull the truck out of the ditch and I took the tractor and went down there and the tractor couldn't pull the trailer, it was so wet, so I left the tractor and came back to the house and then the patrolmen came and they were around in the yard; they just had the yard covered.

Q. In your yard?

A. The yard from the highway to my house, about 25 or 30 cars and they told me it would be better to tell them where this boy is where they could get him before somebody else get him and hurt him. Well, I went to my mother-in-law's house where he usually goes sometimes and I leave there and went to my mother's house and I was at my mother's house, right in that area when they called and said they found the boy. And so they turned around on the way back to my home and I and Mr. J. D. Murphy, the only white man I know was in the car. He's a mail carrier and I met him about a mile from Pineland down the road. There were about five or six cars parked beside the road and he was in the back seat and one of the officers was there and I sent to the car and he run the glass down.

Q. Just a minute, what kind of cars were these? Were these patrol cars or ordinary cars?

A. To tell you the truth, I didn't pay that much atten- [fol. 23] tion to see what kind of a car.

Q. About how many cars do you say there were?

A. There were about five or six I realize, but there could have been more. I know it wasn't no less.

Q. They were parked along the side of the road?

A. Yes, sir.

Q. Tell us what happened then?

A. And this car stopped me and Mr. Murphy got out and I saw my boy by the car and I went there and I imagine it was an officer run the glass down and they had him handcuffed, and I said, "Louis, why did you shoot Mr. Floyd?" He said, "Daddy, I didn't shoot Mr. Floyd. Two white boys took my rifle from me and that's all I know and that's all I got to say, nothing more."

Q. At the time you got on the scene, were there any people outside of these cars that were parked?

A. Yes, some people standing beside the road.

Q. How many law enforcement officers did you observe there? Were all of them patrolmen or officers?

A. Well, there was some of these guys from Columbia. I don't know them, whether they were officers or what they were, but a few of them I know their faces but I don't know their names. A few of them in here were already at my house at the present time.

Q. And these people, did you observe them with any sidearms or other guns, any of these people standing around there?

A. Well, I didn't see no guns because it was night, but it was 6:00 o'clock in January and you can't see very much.

Q. Can you estimate how many people were there at the scene?

A. Well, it looked to me about 25 or 30 head standing [fol. 24] up beside the road.

Q. At the time that you were there and talking with Louis and the other persons around, was any mention made to you about an attorney to represent him?

A. No.

Q. Was anything ever said to you subsequently during the employment of counsel?

A. No.

Q. Did anyone at the time tell you or advise you whether or not your son was being charged with a crime?

A. No, sir, no more than one fellow what brought Mr. Murphy back to my mailbox, he told me the same night, he said, "Bostic, you've got a good record down here in the courthouse." That's all anybody ever said to me.

Q. Mr. Bostic, you mentioned that you left your house and went to your mother's house about five miles away?

A. Well, I went to my mother-in-law's house first and leave there and went to my mother's house. I was going, thinking he might have gone over there.

Q. And as you were moving around, did you have occasion or did you observe any other persons who were engaged in this search?

A. No, sir.

Q. When you went to Robertsville, you didn't see anybody looking for anybody up there?

A. Oh, yes, cars were all down beside the road about a mile from my house and all over to my mother's house. You see, the airplane was circling across and I imagine they were following that airplane.

Q. There was an airplane circling the scene?

[fol. 25] A. Yes.

Q. Can you recall approximately how many different patrol cars you saw in that area at the time?

A. It must have been about 25 or 30 or more. I didn't count them.

Q. From your house to Robertsville and back?

A. Yes, all around that area, cars all along the road.

Q. Now these persons who had Louis in custody at the time you saw him, were there any other colored people standing around at the time?

A. No.

Q. All these men were white men?

A. Yes.

MR. LATIMER: What time was that?

Q. (By Mr. Washington) What time was it?

A. It was no later than 6:00 o'clock.

Q. Let me ask you again, did you see any Negro people standing around this line of cars where you first saw Louis?

A. No, sir.

Q. In other words, all these people in that area at the time when you saw him in the car were white men?

A. That's right.

CROSS EXAMINATION

BY MR. MURDAUGH:

Q. Lawrence, there were a lot of Negroes helping the law enforcement officers find the person who shot Sheriff Floyd, weren't there? Weren't you people just as interested in having justice brought forth, as the white people? [fol. 26] A. Well, there were a few cars down there of colored people but there wasn't as many as white folks.

Q. Wasn't Johnny Murphy helping to find him?

A. Well, Johnny was the first one that helped Mr. Floyd. I think he must have got there about the time he got shot. He was on his way to Savannah.

Q. You don't want the court to think you colored people were not helping to find the person who shot Sheriff Floyd?

A. Oh, no, I didn't say that, but I wasn't there. He must have been shot about two hours before I knowed. Mr. Webb is the one who told me.

Q. You didn't know who was down there at the place, do you?

A. Not until I went down there.

Q. Now you told Attorney Washington that nobody offered to see about a lawyer. Do you remember talking to me the next morning when your son was brought to the scene of the shooting in the roadway?

A. Well, the only thing you told me, I didn't know you good then, I drove up at the same time to take Johnny Murphy to Ridgeland to get a battery to put in the truck, and I drove up at the same time and they had the boy and was carrying him back to the car, and you asked me, "Lawrence, do you want to speak to your boy?" I told you, "Yes, sir, I sure do."

Q. And your boy wouldn't talk to you, would he?

A. Yes, sir, I went to the car and they run the glass down and he talked to me.

Q. Now in the presence of Chief Strom and Sheriff Raymond here that morning, didn't I tell you if you wanted to see your boy at any time that we would arrange [fol. 27] for you to see him? Do you deny that?

A. You might have told me but I didn't hear you.

Q. Why couldn't you hear me?

A. Cause I was on one side the road and you were on the other side.

Q. Didn't I tell you at that time that if your boy wanted a lawyer and if you couldn't hire a lawyer, that I would get one for him if he wanted it, in the presence of Mr. Strom and the Sheriff?

A. No, sir, you might have said it, but I didn't hear it.

REDIRECT EXAMINATION

BY MR. WASHINGTON:

Q. This conversatiou you had with Mr. Murdaugh, did you see him the day previous to this?

A. Somebody told me it was him. I drove up and he asked me, "Lawrence, do you want to take to your boy?" And I said, "Yes, sir, I sure do."

Q. This was the night when they picked him up?

A. Friday, after they brought him back.

Q. What about the day previous to this, the day that they found him?

A. Well, no one told me. After I met him in the road and I got out of this man's car and I was walking down the road on my way home and I seen him in the car and the man run the glass down and I said a few words to him.

Q. Was Solicitor Murdaugh there then?

A. As I say, I don't know. I just know him after they bring the boy back here. You know, I seen him a couple of times, but to know him direct, I didn't know who he was.

Q. Did you observe Chief Strom?

[fol. 28] A. Yes, sir.

Q. He was there when you first came up?

A. He was at my house.

Q. When was this, sir?

A. The same day the thing happened.

Q. Was this before or after you knew that they had apprehended Louis?

A. It was before they catch him.

Q. What did Chief Strom say to you when he saw you that day?

A. He didn't say anything to amount to anything.

BY THE COURT:

Q. This incident in which Sheriff Floyd was killed, took place on January 18th? Is that correct, 1962?

A. Yes, sir.

Q. And your son was tried and convicted at the February term of court and apparently sentenced on March 1st, or at least that is the date that the formal document or sentence bears. How many times did you see him from the time that the shooting took place until the time he was convicted? How many times did you see him personally?

A. I went up there to see him once and I got inside the penitentiary and they told me I couldn't see him, but they had him, carried him out there that same day. They told me I had to come out and get a letter from the Sheriff to go see him, and I have never seen him to talk with him since they took him up until they brought

him to the Ridgeland jail. Mr. Brown came over to my house and told me that Louis was there in the county jail and nobody was home, and he sent for me and I went there Saturday to his office, and he asked me if I had been to see Louis and I said, "Yes, sir, I had been to see [fol. 29] him and they wouldn't let me talk with him in Columbia." And he said, "He's in the county jail." I said, "Do you reckon I could talk to him?" He said, I'll call up right now," and he called and I went over and spoke to him on Saturday and then Sunday morning I brought the whole family back and we spent about two hours with him.

Q. On Sunday?

A. Yes, sir.

Q. That was the weekend prior to the trial?

A. Yes, sir.

Q. And you had come to Columbia to see him and were not successful?

A. I saw him but I couldn't talk with him. They wouldn't let me talk with him.

Q. How do you mean, you saw him but they wouldn't let you talk with him?

A. I saw him when they were carrying him, transferring him from one place to another.

Q. What, if anything, did you personally do about obtaining a lawyer to represent your son?

A. What did I do?

Q. Yes.

A. Well, I didn't have no money at the present time and people told me that the State was going to furnish a lawyer. You see, I nerer knowed nothing about no court, was never up against this before, and they told me to waid until the court was over with to see what the State was going to do and then I could take a further step.

Q. Who told you that?

[fol. 30] A. I have a first cousin who kind of studied a little law.

Q. You have a first cousin in Lee County studying law?

A. No, he's a school teacher and he told me, "Don't try to get no lawyer or nothing because the State is going to furnish a lawyer or two lawyers to start with."

Q. Now you relied on that advice and didn't do anything about getting a lawyer?

A. No, sir, I ain't had nothing at that time to get one with.

Q. Was your son Louis living with you at home?

A. Yes.

Q. How old was he at that time?

A. Seventeen.

Q. What type of employment were you engaged in?

A. Farming.

Q. Strictly farming? You weren't doing anything else?

A. Out of farming season, I went out and catch a job until the farm season came around.

Q. Well, this was in January. There wasn't much farming going on at that time, was there?

A. No, sir, but I was cutting a little pulpwood when it was wet at that time and you couldn't get in to do anything.

Q. You were cutting pulpwood as a laborer or were you cutting your own pulpwood?

A. Cutting my own pulpwood.

Q. Who were you selling pulpwood to?

A. To Mr. Gody at Estill.

Q. How many acres of pine land did you have to cut pulpwood off of?

A. About twenty.

[fol. 31] Q. Is it in your name?

A. No, sir, it's Heirs property.

Q. But you were living on it?

A. Yes, sir.

Q. How many acres do you farm?

A. Thirty-five to forty.

Q. What do you plant, principally?

A. Cotton, corn, peas, potatoes, butterbeans, snapbeans, watermelons, soybeans.

Q. How do you work your land? How do you prepare your land?

A. Well, I've got a little Ford tractor that I fix it up with a tractor and I take a mule and cultivate it with.

Q. A Ford tractor and a mule?

A. Yes, sir, two mules.

Q. How do you haul your pulpwood?

A. I got a truck.
Q. How many children do you have other than Louis?
A. I've got seven.
Q. Younger than Louis?
A. One of them is older.
Q. Is the older child at home or away?
A. He went away Saturday.
Q. But he was at home at this time?
A. Yes, sir. Both of them was at home.
Q. (By Mr. Murdaugh) Had you had the money to employ a lawyer, you would have gone to Ridgeland to employ a lawyer, wouldn't you?
A. Sir?
Q. His Honor asked you if you had money to hire a [fol. 32] lawyer and you said you didn't have. Had you had the money at the time Louis shot Sheriff Floyd, would you have hired a lawyer in Ridgeland?
A. I don't know whether I would or not.
Q. You were satisfied the way Mr. Brown handled your trial? Didn't he do a good job?
A. I think he done fair.
Q. (By Mr. Washington) Back to the time when you first saw your son in the automobile, parked beside the raod, did anyone tell you or did you then know he had a right to have an attorney appointed to represent him?
A. No, sir.
Q. You did not know that?
A. No.
Q. Did anyone at that same time advise you that your son had a right to remain silent and not make any statements?
A. No, sir, no one told me.

MR. WILLIE MARTIN, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. WASHINGTON:

Q. Your name is Willie Martin, sir?
A. Willie Martin.

Q. You live in Jasper County?
A. Jasper County.
Q. How long have you been living there, sir?
A. Since 1912.
Q. What community do you live in?
[fol. 33] A. I live at Pineland, Robertsville Township.
Q. Robertsville Township?
A. Pineland, S. C. but the township is Roberts Township.
Q. Did you, Mr. Martin, attend the trial of Louis Bostic?
A. I did.
Q. What times did you attend that trial?
A. I went there on Monday afternoon.
Q. Were you able to get into the courtroom, sir?
A. I did squeeze in.
Q. And was there a large number of people in attendance at the trial?
A. There was a large crowd in the courtroom.
Q. Were there many people standing outside the courtroom?
A. The whole aisle was full outside but they wouldn't let none stand inside.
Q. And you lived in the general area and vicinity of where Louis lived and was apprehended?
A. That's right.
Q. Could you describe the situation in your community on the day on which he was apprehended? Tell us what happened to you on that day.
A. On the day on which he was apprehended, I was in Savannah and I got home around 6:30 and found the house all closed up. I went and knocked on the door as usual and when my wife opened the door she said, "Did you hear the news about what happened?" I said, "No, I didn't." She said, "Mr. Floyd has got killed and we are all scared to go out."
Q. She said that to you?
A. That was her words to me.
[fol. 34] Q. Did you have occasion to go about in the community the next day?
A. Well, the next day I returned back to my work again but on that same night, after I got through supper,

I usually get gas in the night to go to work the next morning, and I went up there to Mr. Langford's store to get some gasoline and a fellow asked me—we were talking and they said they captured the boy that killed Mr. Floyd. I said "who he was?" He said, Louis Bostic."

Q. Now going back to the trial of this case, how long did you stay in the courtroom on that Monday?

A. I went there Monday afternoon and I stayed until they adjourned. I went back Tuesday morning and stayed until they adjourned for lunch and went back in the afternoon and stayed until they turned out.

Q. Can you describe the atmosphere or the condition of the situation as it pertained on the days that you were there?

A. Well, the atmosphere seemed to be calm but it did look a little suspicious on the last afternoon when I seen so many law enforcement men come in just about the time court was supposed to adjourn.

Q. Could you give us an estimate of the number of law enforcement officers that you observed at this time?

A. Well, it was quite a few. Of course, I can name Chief Strom sitting over there, Mr. Ulmer, and I think there were three or four State Patrolmen, town police. They call come in through the back door of the courthouse.

Q. The back door?

A. Not the back door, but back where the judge sits. [fol. 35] I don't know whether you call it a back or a front, anyway they come in on this end and he come in on the other end.

Q. Did you see the jury empaneled which was trying Louis Bostic?

A. I did.

Q. Were any Negroes seated on that panel?

A. No.

Q. Have you been in attendance at the Court of General Sessions for the past eight or nine years with any degree of regularity?

A. I usually go about once or twice a year.

Q. And have you, during your attendance at court, observed wherher any Negroes were ever seated on the Grand Jury?

A. One.

Q. During the entire time of eight or nine years?
A. One.
Q. At what term did you observe that juror, serving?
A. At that same particular time, at the trial of Louis Bostic.
Q. And you had not seen a Negro serving on the jury before that time?
A. Not on the Grand Jury.
Q. You have observed Negroes serving on the Petit Jury Panels?
A. Yes, sir.
Q. Do you have any idea as to the largest number of such jurors that you observed during that eight or nine years?
A. Well, that was the largest right then, they had three on the Grand Jury and one on the Petit.
Q. How many on the Grand Jury?
A. One.
[fol. 36] Q. And how many on the Petit Jury?
A. Two.
Q. And you say this is the largest number of Negroes you've ever seen serving?
A. That's right.

CROSS EXAMINATION

BY MR. LATIMER:

Q. You were not at the scene on the 18th of January when Louis Bostic was captured?
A. No, sir.
Q. You don't know what the atmosphere was then?
A. No, I don't.
Q. I believe you testified that when you returned from Savannah, Ga. your wife made the statement that "we are all scared to go out"?
A. That's right.
Q. You weren't scared to go out because you went and got gas?
A. I went and got gas.
Q. You weren't scared to go out, were you?
A. Oh, well, I had to go because that's the only way I could get to work, by getting gas to go the next morning.

Q. You didn't have any reason to be scared when you got there?

A. No.

Q. And nothing at the service station caused you to be in apprehension?

A. No, sir.

Q. How about at the time of the trial? Were you called to that trial?

[fol. 37] A. I was just there.

Q. Ordinarily, do you go to every term of General Sessions Court?

A. Well, I try to go about twice a year.

Q. What work do you do in Savannah?

A. I do carpenter work.

Q. Do you ordinarily take off from your work to attend court?

A. Well, I do.

Q. Were you called as a witness or a juryman?

A. No, sir.

Q. You just attend to be attending?

A. Yes, sir.

Q. How about the make up of the audience of the court of General Sessions? Do you have both white and Negro people sitting in the courtroom?

A. Yes, they do.

Q. Was there anything unusual about this particular trial?

A. Unusual?

Q. In reference to other trials?

A. Just one Negro was on the Grand Jury. That's all what was unusual.

Q. I mean was there anything unusual about the conduct of his trial compared to other trials you attended?

A. No. The only difference I observed, that they had one Negro on the Grand Jury at that particular trial.

Q. Was there anything out of the ordinary in reference to the crowd that was surrounding the courthouse?

A. No, sir.

Q. Nothing different between this trial and other trials [fol. 38] you attended?

A. No, sir.

Q. And I believe you state you attended Court of General Sessions for how many years?

A. I've been going about twice a year.

Q. For how many years?

A. Oh, about eight, something like that. Of course, I've been there before, but I mean since I have been attending regular.

Q. Did you attend the entire trial of Louis Bostic?

A. I got there Monday afternoon. I couldn't get there Monday morning.

Q. He was represented by attorneys at that trial?

A. That's right.

Q. And I believe you testified that the atmosphere in the courtroom was calm at the trial?

A. Yes, sir, that's right.

Q. When did the trial actually get under way? When did it start?

A. It started Monday.

Q. And what took place on Tuesday?

A. Well, they had the witnesses on the stand.

Q. Did they have witnesses in the courtroom on Monday and Tuesday?

A. They did, and they testified Tuesday.

Q. What took place on Wednesday?

A. They finished up Wednesday morning and the jury went in the room and they came out at about 8:10 on Thursday night.

Q. Thursday night or Wednesday night?

A. I said Thursday night.

[fol. 39] Q. The jury came back at 8:10 on Thursday night? You are positive about these dates, now? As to what went on? In other words, you were at home on Sunday?

A. That's right.

Q. Monday morning you went to the courthouse?

A. That's right.

Q. And Louis Bostic's trial began on Monday?

A. That's right.

Q. And it took place all Monday and all Tuesday and all Wednesday?

A. You see, they sent the jury out Wednesday.

Q. How long did the jury stay out?
A. The jury stayed out about six hours and fifteen minutes, I think.
Q. And came back when?
A. Thursday night.
Q. I believe you've already testified that Louis Bostic was represented by three attorneys?
A. That's right.
Q. Did they do an efficient job of defending him?
A. I believe that they did.
Q. In other words, in your opinion—
A. In my opinion, I believe they did.

BY THE COURT:

Q. I don't know if I understood your testimony correctly or not. It appeared to me that you testified at one point that there were no Negroes on the trial jury panel, that is, the people from whom the twelve men who tried Louis Bostic were drawn, and then it appeared to me later on that you testified that there were two Negroes on the [fol. 40] trial jury panel. Now what is correct?
A. Well, I might be missed the truth of the jury, but one of them was on the jury that bring in the true bill.
Q. That was the Grand Jury.
A. One was on that.
Q. What about the trial jury, the one that tried him?
A. There were none on the one that tried him. Of course, they had two of them on the panel, but—
Q. That's what I'm trying to get straight. What you mean is that the jury that was actually sworn and tried Louis Bostic, there were no Negroes on that jury?
A. No Negroes.
Q. But there were two Negroes on the jury panel from which that jury was drawn?
A. That's right.

(Short Recess)

MR. J. P. STROM, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. PERRY:

Q. Will you state your name and occupation?

A. J. P. Strom, Chief of South Carolina Law Enforcement Division.

Q. Chief Strom, did you take part in an investigation into the death of Sheriff Floyd of Jasper County?

A. I did.

Q. What was the date of his death, please?

A. January 18, 1962.

Q. Chief, were you already in that part of the state [fol. 41] when you received the report of Sheriff's Floyd's death?

A. I was at the Headquarters of the South Carolina Law Enforcement Division.

Q. And where is that, please?

A. In Richland County, up the Newberry Highway.

Q. You received the report that Sheriff Floyd was killed and what did you do with reference to mobilizing any part of your force of officers and conducting an investigation?

A. I called several agents. I sent the bloodhound detail and two airplanes to the vicinity of Ridgeland.

Q. Did you personally go into Ridgeland?

A. I did. I went to Jasper County in the Pineland section.

Q. About what time of day did you arrive on the scene?

A. As well as I can remember, it was after 3:00 o'clock, between 3:00 and 4:00 o'clock.

Q. Now can you tell us, sir, approximately what time was it that Sheriff Floyd was shot?

A. I don't know exactly, but it was after lunch. It was between 1:00 and 2:00 o'clock, as well as I can remember.

Q. And when you received the information that the Sheriff had been killed, did you immediately depart for Pineland?

A. I did.

Q. Could you tell us about how long it took you to get there?

A. Takes about two hours to drive from Columbia to that vicinity or may be a little less.

Q. How many of your officers did you carry down?

A. I carried Lieutenant Stokes, Lieutenant Windham and called several others on the radio. We probably had ten officers or maybe two or three more. I called all I could get in that vicinity.

[fol. 42] Q. And I believe you stated that you also directed that the bloodhounds be dispatched to that area?

A. That's correct.

Q. How many bloodhounds were dispatched to the Pineland area?

A. I don't know. I don't keep up with that. Sometimes they carry three and sometimes they may carry five and sometimes ten. It just depends. I think somebody said they had three to five, but I don't know exactly how many.

Q. And also two airplanes were dispatched?

A. That's correct.

Q. When you arrived on the scene, then, the investigation had been going on for more than two hours when you personally arrived?

A. It had been going on for some time.

Q. How many persons were at the scene of this crime when you arrived?

A. It was a good many people. The unusual thing that I noticed about it, there were more colored people looking for this boy than there were white people. Everywhere I looked there were colored people trying to help and trying to assist in every way that they could.

Q. I understand. Now you say "looking for this boy." Now is this what you meant to say or did you mean to say they were looking for whoever shot Sheriff Floyd?

A. We had a name, I believe. Of course, we didn't know exactly at that time, but the word was out, as well as I remember, that Louis Bostic was being looked for.

Q. But the truth of the matter is at that time—

A. They didn't know who shot him.

[fol. 43] Q. They didn't know who shot Sheriff Floyd?

A. That's right.

Q. So that the people who were gathered at the scene on this occasion were looking for whoever committed this crime?

A. It didn't make any difference who it was, they wanted to help, as far as I could judge.

Q. Now you say there was a good number of people. I wonder if you could give us an estimate of the approximate number?

A. I was moving around from place to place. I would go one place and come back. I saw a lot of people. Of course, I would see the same people, but I think everybody in that community or most everybody in that community had some interest in this case and was out trying to get information or assist in the investigation, and there were a good many Highway Patrolmen and good many SLED agents and the local officers, all of them who knew about it were there.

Q. Now without trying to seem repetitious, I wonder if you could help us out just a little bit now as to the approximate number. Would you say there was a hundred, two-hundred, three hundred people or would you say there were more than that?

A. You mean actually out trying to help out? I believe that I saw 150 people. Of course, a lot of them were children and women, colored children and white children. Everybody in that community was out and had some interest and that's not unusual. I mean, that's in all investigations of this nature. When you have a killing in a community, everybody comes out, expecially in a rural community.

Q. And Sheriff Floyd was a popular man in this community, wasn't he?

[fol. 44] A. Sheriff Floyd was a real popular man. Especially, he had a reputation for being kind and fair and the colored people liked and respected him very much, to my knowledge.

Q. So that the people were rather indignant over his death, weren't they?

A. I didn't hear anybody say they wanted to shoot anyone. Everybody was sorry, but I didn't hear any bad remarks. I didn't worry about what was going to happen.

Q. But, of course, the fact that such a popular man had been shot and killed did bring out a good part of the community, didn't it?

A. I think if I can answer the question this way: Due to Sheriff Floyd's brothers and their desire, and being in the law enforcement business themselves, one being a Magistrate and the other an excellent citizen and making remarks that they wanted justice, that there was nothing else to fear after the brothers had made such statements as that. They wanted whoever killed Sheriff Floyd to have a trial and that word was out.

Q. Isn't it a fact that many of the people gathered there at the scene on this day were armed?

A. I didn't notice anybody armed but the officers.

Q. Do you mean to say that none of the people who were not officers had shotguns or any weapons?

A. I didn't notice it, but I wouldn't say that there weren't, but I didn't notice that.

Q. Was there generally an attitude on the part of the persons gathered there to assist the officers in conducting the investigation?

A. As far as I could judge.

[fol. 45] Q. And assisting the officers in the conduct of the investigation included trying to catch the person who committed this crime?

A. That's correct.

Q. Were they generally fanned out looking in the woods around the area in which this killing occurred?

A. Well, we had the plane in the air, we had the bloodhounds on the ground, and this was not an unusual operation because we have the same operation once or twice a week. Your plane is in the air and if they can see a man running on the ground, they call and radio and you move your dogs from one place to the other, and, of course, when you move one police car, then the whole crowd will go. Of course, that happened there.

Q. And that's what happened here?

A. That's right. That happens even with lost children or old people or anything else. You look for exactly the same thing to happen. You can have 25 people here and you move the police, and they all follow.

Q. So that on this occasion, then, with all of this large group of people, every time the police went in a direction, the rest of the crowd followed?

A. For the most part.

Q. Now when you arrive on the scene, did you take command of the investigation?

A. I didn't take command. I worked with the other officers and did what I could to assist.

Q. But, generally speaking, once you arrived most of the officers deferred to you, did they not?

A. Well, they depended on us to some extent because [fol. 46] we had the plane and we had the bloodhounds and they were wanting to get the information that we had, but we were all working together. There wasn't any question of anybody being in command. Everybody was working together.

Q. Now, sir, did you personally apprehend Louis Bostic?

A. I did not.

Q. Were you present when he was caught?

A. I was not present, but I was near.

Q. Did you receive information that he was finally caught by whoever caught him?

A. I received a radio call that he had been picked up. Louis Bostic's name wasn't called, I don't believe, at that time but when I got to the automobile I was told, if you want me to testify to that, that the Sheriff's brother had picked up Louis Bostic and, I believe, turned him over to Lt. Windham of the S. C. Law Enforcement Division and maybe other officers.

Q. About how long after Louis Bostic was picked up was it before you arrived at the point where he was being held?

A. Well, it couldn't have been but just a little time. I don't remember exactly how long.

Q. When you arrived, had Louis Bostic made any statement?

A. As far as I know, he had not.

Q. Now may I ask you this: When you arrived, did other persons also arrive at the scene immediately around Louis Bostic?

A. Not expecially around him; there were other people around. There weren't any more people then than there were before.

Q. But if I understood your testimony correctly, in a situation like this when an officers moves in an area, the other people more or less follow the officer?

[fol. 47] A. That's right.

Q. And so when the word got out that "we've got him" and you received this word and you went to the area, did not other people do the same thing?

A. I think that's correct, because they would hear on the radio and they would follow the same routine by following the officers.

Q. And when you arrived over there, would you tell us, please, how many other police officers arrived, both at that time and later?

A. I don't know exactly how many were there but there were some. I know Blake Hall of the Highway Patrol and other officers, I don't remember who they were.

Q. Would you give us an estimate, please, of the number of officers who converged on this scene?

A. Well, I believe I saw ten or twelve, maybe fifteen officers right in that area.

Q. And other than those ten or twelve or maybe fifteen officers would you tell us about how many citizens who were not officers also converged on this scene?

A. It was a good many people. Then it was getting late in the afternoon and I imagine all of them who had heard about it converged on the scene, but I didn't attempt to estimate it but it was a good many.

Q. Would you say it was several hundred?

A. Oh, I wouldn't say several hundred but a good many. When I saw them I would rather think there were 50 or 75 people. I can't be sure about that because I don't remember it that well.

Q. So you would say up to 15 officers and you would [fol. 48] estimate in the neighborhood of 75 other people converged right around the area?

A. Not converged around Louis Bostic but came up in automobiles because they had heard on their radios and by following police cars.

Q. Now what did you do when you arrived? Did you drive over to did you walk over to where Louis Bostic was?

A. I drove over.

Q. Did you get out of your car when you got there?

A. I got out of the car where the gun was turned over to me, a .22 rifle, and also Louis Bostic was placed in my automobile along with Lt. Faulk and I.

Q. He was placed in your car by who?

A. I guess by Lt. Wyndham, as far as I remember.

Q. Where was he placed? In the back seat of your car?

A. The back seat of my car and I got in the back seat with him.

Q. Who else got in the back seat with him?

A. It seems there was another officer, maybe Deputy Sheriff Michael and we later met Sheriff McTeer and Michael got out and Sheriff McTeer of Beaufort County got in the car with us and we went in the direction of Ridgeland.

Q. No, sir, before you start your trip from this point to Ridgeland, I would just like to finish getting the picture of how many people got in the car with you at the point where Louis Bostic was placed in your car.

A. Lt. Faulk and, I believe—I don't want to be too sure, but I think Deputy Sheriff Michael and I. There were four of us. I think that's right.

[fol. 49] Q. But however, some 15 officers were in the immediate vicinity?

A. That's right.

Q. These other officers did not get in the car with you and Louis Bostic but were in the immediate vicinity?

A. That's right.

Q. As were the 75 or so other people also in the vicinity?

A. That's right.

Q. Now how long did you stay in that one spot before you moved?

A. We stayed there just a few minutes. I took the rifle and a cap.

Q. you stayed there a few minutes?

A. That's right.

Q. Now will you identify the location for us, please, as to where Louis Bostic was placed in your car? What part of Jasper County were you then in?

A. I would rather for some other witness to identify that location because I'm not too familiar with that locality.

Q. But I believe you said you thereafter went to Ridgeland?

A. That's right.

Q. But at this point you were not at Ridgeland?

A. That's right.

Q. Do you know whether you were near Pineland?

A. I know we were in the Pineland area.

Q. So that you sat in your car for several minutes, you say?

A. Not sat in the car; we were on the ground and I was talking to different people. Lt. Wyndham and Patrolman Blake Hall. I was on the ground until Bostic was put in my car and then we went down the road [fol. 50] where we met Sheriff McTeer.

Q. I just want to go back to this point before you drive off. Did you have any conversation with Louis Bostic at that time?

A. After he was in the car, I had some conversation with him.

Q. Did the other officers also have conversation with him?

A. Well, I didn't hear what conversation they had with him.

Q. Of course, he was aware of the number of people who were converged around him, wasn't he?

A. I'm certain he could see, yes.

Q. Louis Bostic was then 17 years old?

A. That's what he said.

Q. Was his father there at that time?

A. I didn't see his father until the next morning.

Q. Now, Mr. Strom, would you please repeat for us any word of advice which you then conveyed to Louis Bostic?

A. Well, it started out talking about the cap. I asked him if it was his cap. He denied it was his cap to start with.

Q. Did you state to him that he didn't have to make any statement?

A. I stated to him as I state to all people that he did not have to make a statement, that any statement he did make could be used against him and he had the right for an attorney or counsel and I would take him to see his mother and father if he wanted to see them. And I think he'll tell you that.

Q. You told him all of these things right then and there?

A. Right.

Q. You told him he didn't have to say anything?

A. That's right.

Q. Do you think he understood you?

[fol. 51] A. I'm certain he did because I told him more than one time.

Q. And that you would, if he wanted you to, take—that you would if he wanted you to, to take him to his mother and father?

A. That's right.

Q. Did he express a desire to go home to his mother and father?

A. He didn't want to go home, he didn't want to see them.

Q. He didn't want to see them?

A. That's right.

Q. But you told him, "We'll take you over to your mother and father."

A. That's exactly right.

Q. And "You don't have to say a word."

A. I told him he did not have to make a statement, but if he did it would be used for or against him and I told him more than one time, as I tell all people.

Q. All right, Chief, did you tell him he had a right at that moment to demand a hearing as to the reason for his detention?

A. I did not tell him he had a right for a hearing, no, sir.

Q. Did you tell him at that time that he had a right to get a lawyer to advise him of his rights?

A. I told him that. I told him he had a right to get a lawyer and I told him he could talk to his mother or father, and I told him before he made a statement that if he wanted to use the phone he could call or I would call. I tell everybody that we take a statement from the exact same thing because the only thing I'm interested in is the honest truth.

Q. You stated you would allow him to make telephone calls?

A. I would have if he wanted to or I would have car-
[fol. 52] ried him by his house.

Q. But he, of course, did not want to go home?

A. He did not.

Q. So you said that you then proceeded to Ridgeland?

A. That's correct.

Q. Do I understand this to be your testimony?

A. That's right.

Q. And when you got to Ridgeland, where did you go?

A. We stopped on the street. At that time we saw Deputy Sheriff Johnny Raymond who is the present Sheriff. We got out of the automobile to talk with Johnny Raymond who was the Deputy Sheriff at that time, and left Louis Bostic and Sheriff McTeer of Beaufort County in the automobile.

Q. May I ask you, please, I hate to interrupt you, but I would like if you can to fill us in right here. What happened to the 12 to 15 other officers who had been in the vicinity when Louis Bostic was transferred to your car? Did they follow you into Ridgeland?

A. No, our men went home because I gave them permission on the radio to go and I imagine the other officers went home to supper. It was suppertime and I imagine everybody went home to eat.

Q. How many of them followed you to Ridgeland?

A. Nobody, not a soul.

Q. What about the other citizens numbering about 75?

A. Well, it was all over then and if anybody followed me, I didn't know it and I certainly didn't.

Q. When you got to Ridgeland, you saw the present Sheriff of Jasper County who was then a Deputy Sheriff?

A. That's right.

[fol. 53] Q. And you stopped and had some conversation with him?

A. Stopped and had some conversation with Sheriff Raymond and left Louis Bostic in the car with Sheriff McTeer. Sheriff McTeer called me and Lt. Faulk asked us to get back in the car, that Louis Bostic wanted to tell the truth. We had been talking about the cap. We already called on the radio to have somebody go and bring his pants because we figured they knew about that cap. Of course, we canceled that because Louis Bostic at that time told us that he had shot the Sheriff.

Q. Now he first of all said, whatever it was, to Sheriff McTeer of Beaufort County?

A. That's correct.

Q. Then Sheriff McTeer called you and said, "Come on in, I think he's ready to make a statement."

A. That's right. I was standing right beside the automobile and I was talking to Sheriff Raymond. I think he had been raiding a liquor still and had not heard about it and I was telling him about the Sheriff being killed and just after three or four minutes, we stood there maybe a minute's difference, but Sheriff McTeer asked us to get in the car and Louis told us the truth about shooting the Sheriff.

Q. Now that was, of course, the first verbal acknowledgement by him that he had shot the Sheriff?

A. That's right.

Q. I believe thereafter some written statements were taken down and so forth?

A. That's right.

Q. Now the advice which you gave Louis Bostic when you first met him was that he didn't have to say a thing?

[fol. 54] A. That's right.

Q. And you feel positive that he understood you?

A. Well, I know he heard me and he had every reason to understand me because he wasn't too excited. He could talk.

Q. He talked rather plainly?

A. He talked plain; I mean, he was in his right mind and in my judgment, he understood me.

Q. You specifically told him that "we'll take you to your parents' home if you want us to" and "You don't have to say a thing."

A. I was sort of anxious to take him to his parents' home because I figured that was his cap, for one thing, and I wanted them to identify the cap in his presence, but he wasn't anxious to see his parents.

Q. And he declined your offer to take him to the home of his parents?

A. He said he didn't want to see them.

Q. Did you tell him you would take him to the home of his parents and release him to his parents?

A. I did not.

Q. Did he understand that he was going to continue to be in custody?

A. I told him that he was under arrest and I'm satisfied he figured he was going to be in custody because he knew he had shot the Sheriff.

Q. But he had not then yer admitted that he had shot the Sheriff, had he?

A. Because I couldn't know what he was thinking. I don't have any idea he thought he was going home that night.

[fol. 55] Q. Did you explain to him why he was being held when he was first placed in your car?

A. We talked in general. That was the conversation about the Sheriff being shot, who owned the rifle and who owned the cap, and he told us that two white boys took the rifle away from him and started with it. Then he denied it was his cap.

Q. So that he was not specifically asked at that time whether he shot the Sheriff?

A. Oh, yes, that's what I was trying to find out from him.

Q. But he at first denied it?

A. That's right.

Q. Why did you offer to take him to the home of his mother and father if, in fact, he was then under arrest?

A. Well, I was talking to him about his cap and I wanted his mother and father to see the cap. Of course, if I were to take him to show them the cap then he naturally would see his mother and father and I told him I

would take him to his mother's and father's house. Of course, he denied the cap and we called on the radio and he heard that and he later admitted to Sheriff McTeer that it was his cap.

Q. So that this offer which was made to take him to the home of his mother and father was actually not made in the spirit of telling him he didn't have to say anything, was it?

A. I had already told him that anything he said would be used against him, for him or against him, and I told him he had every right to see his lawyer. If he had told me he wanted to see a lawyer, I would have been glad to take him to see any lawyer that he named.

Q. As I understand, you told him he didn't have to say anything?

[fol. 56] A. That's right.

Q. But thereafter, you continued to ask him questions?

A. That's right, and he continued to talk.

Q. Did you offer to call a lawyer over to advise him?

A. Before he made his statement in Columbia, I'm certain I offered again to call a lawyer for him if he wanted one called.

Q. As I understand, he had already made a verbal admission by the time you got to Columbia?

A. That's right, he talked on the way to Columbia.

Q. So he was still actually under the effect of having made that verbal admission when he got to Columbia?

A. He never changed. I mean, he went right down the line. He told one story and stuck to it all the way to Columbia.

Q. Chief Strom, may I inquire of you approximately how far you had to travel from the point where Louis Bostic was placed in your car to Ridgeland? I want to get some idea of the mileage.

A. I believe it's over a hundred miles, 115 or 120 miles.

BY THE COURT:

Q. You are thinking from Columbia.

A. Oh, about 10 or 12 miles, I believe that's right.

Q. (By Mr. Perry) And you said there were no crowds of people on the streets in Ridgeland?

A. I didn't see any crowds in Ridgeland at all. I saw Sheriff Raymond. Ridgeland was quiet enough where he had not heard about it.

Q. What time of day did you arrive at Ridgeland?

A. I believe it was between 5:30 and a quarter to 6:00, or something near that.

[fol. 57] Q. Let me ask you, sir, is Ridgeland the county seat of Jasper County?

A. Yes.

Q. Did you take Louis Bostic to any magistrate down there or any court and prefer charges against him for the killing of Sheriff Floyd?

A. Not that night, but we carried him back early the next morning.

Q. But you did not do so that night?

A. That's right.

Q. And when you transported him these 10 or 15 miles, on that occasion before he made his verbal admission, you did not take him to any magistrate or any judge to prefer charges against him?

A. Well, in my opinion, I thought I was doing the reasonable thing because I was informed that the magistrate in that area was the Sheriff's brother and we were doing what we thought was reasonable in that we didn't take him before that magistrate, so we brought him and took his statement, as we do in all cases or most of them, and carried him back early the next morning where we met Solicitor Murdaugh and Sheriff Raymond and I believe the magistrate was there and Louis Bostic's father.

Q. Did you confer with Solicitor Murdaugh that evening; that is, the evening of January 18th before you traveled from Ridgeland to Columbia?

A. I can't remember whether I conferred with him that afternoon. I know I conferred with him, but I don't know whether it was that afternoon or the next morning. I don't remember.

Q. You say that you understood that the magistrate [fol. 58] in the Ridgeland area was the brother of Sheriff Floyd?

A. That's right.

Q. Did you inquire as to where the nearest magistrate, other than the magistrate at Ridgeland, resided?

A. No, I didn't do that.

Q. You made no effort to prefer charges that evening before any jusge or any magistrate?

A. Well, it was already late and after dark and we carried him back the next morning early. We were down there, I think by 10:30 or 11:00 o'clock where his daddy was right there on the scene and the magistrate and the solicitor was there and other people.

Q. As I understand, of course, by the next morning he had made all of these admissions which were later introduced into evidence at the trial?

A. He made one statement to me, that's correct.

Q. Chief Strom, with reference to the trip from the point out in the woods into Ridgeland, did I understand you to say that you and Sheriff McTeer rode in the car with Louis Bostic?

A. And Lt. Frank Faulk.

Q. Of your staff?

A. That's right.

Q. None of the local officers from Beaufort County, or rather, from Jasper County rode with you in your car?

A. No.

Q. Now in this 10 to 15 miles trip from the woods into Ridgeland, did you interrogate Louis Bostic concerning this killing of Sheriff Floyd?

A. I talked to him. We were riding along and we [fol. 59] asked him, I was trying to get him to admit that it was his cap and he wouldn't admit it on that trip. He didn't admit it until after we got to Ridgeland.

Q. You asked him nothing but whether or not this was his cap? You didn't ask him if he shot Sheriff Floyd?

A. Oh, yes, I asked him that, too, but the cap was found along a path where we figured the man who shot the Sheriff ran and dropped his rifle and the cap, and I wanted him to identify that cap if it was his.

Q. But you also asked him about whether he shot the Sheriff?

A. That's right.

Q. And, of course, during this trip he denied it?

A. I also asked him if he knew the Sheriff and he told me that he did know the Sheriff. I said, "How long have you been knowing Sheriff Floyd?" And he said, "I've been

knowing Sheriff Floyd ever since my people was old enough to tell me who people were."

Q. About how many times did you ask him whether he shot the Sheriff, on this 10 to 15 mile trip?

A. I don't know. It wasn't many times because we talked about the cap and we were talking about his parents. It wasn't just a hard, down interrogation because he admitted right off—

Q. Well, he didn't admit until he got to Ridgeland, did he?

A. That's right.

Q. Did you advise him any more on this trip from the woods into Ridgeland that he didn't have to make any statement?

A. I didn't advise him, but when Sheriff McTeer got in the car I heard Sheriff McTeer advise him again.

Q. But you didn't advise him any more on this 10 or 15 mile Trip?

[fol. 60] A. I heard Sheriff McTeer advise him that he did not have to make a statement, and things like that.

Q. This, of course, was after you had gotten out of the car?

A. No, while we were in the car going to Ridgeland.

Q. And I just want to know, you were just giving him this warning over and over again, that he didn't have to make any statement?

A. Well, Sheriff McTeer had begun to talk to him and Sheriff McTeer is a trained law enforcement officer and he knows that before you ask a man questions under the law that you are going to advise him that he does not have to make a statement and he did, as any other trained law enforcement officer would do.

Q. And, of course, after this statement was made, Louis Bostic was asked whether or not he had committed this offense?

A. That's right.

Q. And, as I understand, he denied it at that time?

A. He denied it for that time we were driving 10, 12 or 15 miles going from the Pineland section to Ridgeland.

Q. It was only after you arrived in Ridgeland when Sheriff McTeer was left alone with him in the car that he made some statement?

A. Well, we were all standing right beside the automobile. We got out and talked to Deputy Sheriff Raymond and Sheriff McTeer was in the car, and the car was here and I was right here, that much (indicating about three feet).

Q. Chief Strom, the statements which were later reduced to writing, would you tell us when this was done, please?

A. On the evening of January 18, 1962.

Q. That's the same night on which the Sheriff was [fol. 61] killed and on which Louis Bostic was apprehended?

A. That's right.

Q. Where were the written statements taken down in writing?

A. In the South Carolina Law Enforcement Division Headquarters.

Q. And thereafter, as I understand, the verbal statement and the written statements were used as a part of the evidence upon which the conviction of Louis Bostic was obtained?

A. That's right.

CROSS EXAMINATION

BY MR. MURDAUGH:

Q. Mr. Strom, the statements given to you and Lt. Faulk and whatever officer was in the car with you on this 10 or 15 mile trip back to Ridgeland, were those statements made free and voluntary?

A. They were.

Q. Did you or anyone else offer any hope of reward or promise?

A. No, sir.

Q. Did you or anyone offer any duress or violence to secure them?

A. No.

Q. Were they voluntary?

A. Yes, sir.

Q. How long did that trip take? About ten or fifteen minutes?

A. Yes, sir.

Q. On direct testimony, you testified that the man made his full confession to Sheriff McTeer in your presence in Ridgeland?

[fol. 62] A. Right.

Q. Was that 10 or 15 minutes after you had him in custody? After you had him in your custody.

A. Well, it may have been a little more than 10 or 15 minutes.

Q. Give us an estimate of how long it was.

A. Well, let's say around 30 minutes because we stopped and picked up Sheriff McTeer and got him in the car and we drove along and we talked to him, but it was just a short length of time.

Q. Now the statements that he made to you and Sheriff McTeer and Lt. Faulk in Ridgeland after you got there in which he made a full confession of what transpired, state whether that statement was free and voluntary?

A. It was.

Q. Were the statements made to you, did you use any threats of violence or duress or anything of that nature?

A. I did not.

Q. Was any force or duress used by you or any of the other officers?

A. No.

Q. Was any hope of reward given to the defendant?

A. No.

Q. Were the statements free and voluntary?

A. They were.

Q. What about the statements that you took in Columbia that were reduced to writing? State whether or not that was free and voluntary?

A. It was.

[fol. 63] Q. Did you or anyone else use any hope or promise of reward to secure them?

A. We did not.

Q. Did you use any violence or threats of violence to secure the statements?

A. We did not.

Q. Did anyone do so?

A. No, sir.

Q. Were the statements free and voluntary?

A. They were.

Q. Now the evening in question, when you got him to Ridgeland, and talked to the present Sheriff, then Deputy Sheriff Raymond, state whether or not he made an effort to secure a magistrate to have the defendant arraigned and you couldn't find one?

A. It's my information that he did.

Q. You, of course, don't know?

A. I don't know.

Q. Was the first available time that you could locate a magistrate the next morning? The following morning?

A. Yes, sir, in my opinion, that was reasonable.

Q. Now was the defendant arraigned at that time by Magistrate Harris?

A. That is correct.

Q. And before he was arraigned, did the defendant make other statements to you and I down there?

A. He made statements to you in my presence and when I heard you advise him that if he did not have an attorney, that you would have the court to appoint attorneys and talk to him at length and at that time his father came up and his father attempted to talk to him, but [fol. 64] Louis would not talk to his father.

Q. Did you hear me advise Louis that if he wanted a lawyer, that I would get him one if he couldn't get one?

A. I did.

Q. Did you hear me advise Louis and Louis' father that anytime Louis' family wanted to see him, that I could make arrangements for them to see him?

A. I did.

THE COURT: When was that?

A. That was on the morning of January 19, 1962.

Q. (By Mr. Murdaugh) That was at the arraignment of Bostic?

A. That's right.

Q. At that time state whether or not I asked you to make arrangements for the family of the defendant to see him any time they wanted to?

A. You did, sir.

Q. What did the defendant tell you and I about seeing the family?

A. He didn't want to see them.

THE COURT: Do you want to use the term arraignment or preliminary hearing?

MR. MURDAUGH: As I understand, he has to be taken before a magistrate and arraigned, and he was arraigned before the magistrate that morning.

Q. (By Mr. Murdaugh) Now at the same time did I advise him he could have a prelininary hearing, that all he needed to do was notify me or you or the magistrate?

A. You did.

Q. Did I tell him that he could tell us orally and he [fol. 65] could could get a preliminary hearing?

A. You did.

Q. What did he say about that?

A. He said he didn't want one.

Q. By arraignment, state whether or not the warrant was read to him and he was fully advised of what he was under or charged with?

A. The warrant was read to him, yes, sir.

MR. MURDAUGH: When I said arraignment, Your Honor, I'm not talking about a formal arraignment in court.

Q. The defendant didn't enter any plea? He didn't say whether he was guilty or not guilty before the magistrate?

A. No, sir.

Q. Now to start off with, if I understood you right, Lt. Wyndham turned the defendant over to you?

A. Yes, sir.

Q. Then you and Frank Faulk and maybe another officer, you are not certain about who the other officer was, rode from where Wyndham turned him over to you and somewhere on the way Sheriff McTeer got in the car with you?

A. He did.

Q. And the other officer got out?

A. That's right.

Q. That left you, McTeer, and Faulk in the car with the defendant?

A. Yes, sir.

Q. And he made some statements to you on the way, and when you got to Ridgeland, you and Faulk got out

of the car for just a few minutes or seconds, I believe you said?

[fol. 66] A. We got out and talked to Sheriff Raymond and Deputy Sheriff Raymond at that time.

Q. Then McTeer called back and said "This boy wants to tell the truth," or words to that effect?

A. Well, he didn't call. We were already standing right by the car.

Q. You got back in the car and Sheriff McTeer told you and that's when he made the confession and that was not more than 30 minutes, Mr. Strom, after you had him in your custody?

A. That's right, sir.

Q. Did you hear him make the statement to Sheriff McTeer before you got back in the car?

A. No, sir, I heard him after I got in the automobile.

REDIRECT EXAMINATION

BY MR. PERRY:

Q. Chief Strom, the little hearing you had the following morning before Magistrate Harris, was it?

A. That's correct.

Q. Is that where the charges were formally made against the accused?

A. That's where the warrant was read to him.

Q. Will you tell us everything that was said by the magistrate, please?

A. I couldn't begin to tell you everything that was said by the magistrate, but the solicitor was there and the magistrate was there and I wouldn't attempt to tell you.

Q. Solicitor Murdaugh was there?

A. He was there.

Q. And the magistrate was there, and a good deal was said by the magistrate?

[fol. 67] A. Yes, sir.

Q. The magistrate read out the full contents of the warrant?

A. I don't believe I heard everything that was said by the magistrate. I wouldn't attempt to go into that, but I know the warrant was read to him.

Q. So that at that time, actually, the charges were formally preferred, weren't they?

A. Well, I don't know. The warrant was read, but he wasn't asked whether he was guilty or not guilty or anything like that. He was informed that he was being charged with the murder of Sheriff Floyd and so his father was there and he heard it.

Q. Louis Bostic wasn't asked to say anything at that time?

A. As far as I know, I don't remember. I would rather you would bring that out by some other witness because I didn't hear everything the magistrate said.

Q. But he did say a good deal, didn't he?

A. I don't know what all he said. I don't remember.

Q. How long did this hearing last?

A. It didn't last long.

Q. Did you, for instance, state to the magistrate that you had these written confessions?

A. I don't think I did. I told the solicitor.

Q. You told the solicitor that, in the presence of the magistrate?

A. I remember clearly the solicitor telling him he would appoint him a lawyer if he didn't have a lawyer, and things like that. He went into detail on it.

Q. But as I understand, Louis Bostic didn't have any lawyer at the hearing?

[fol. 68] A. He did not.

Q. And, of course, you mentioned to the solicitor that Louis Bostic had already signed these statements?

A. That's correct.

Q. You called those to the attention of the solicitor and the fact that on the day before an oral confession had been made?

A. That's right.

Q. Did the magistrate hear these statements made?

A. I don't know if he did or not.

Q. Were they made in the presence of the magistrate?

A. I don't know. I don't remember.

Q. How close were you and Solicitor Murdaugh to the magistrate when these statements were made?

A. I told you I don't remember.

Q. Will you try to remember, please, sir?

A. Well, what I remember I remember, and the things I don't remember I don't remember. There are other witnesses here who can testify.

Q. How large is the magistrate's office? Is it as large as this room?

A. We weren't in the magistrate's office.

Q. Where were you, sir?

A. We were out there on the highway.

Q. Is that where the magistrate read the warrant to Louis Bostic, on the highway?

A. That's right.

Q. Is this an area the magistrate uses as an office?

A. We went back to the scene where we met Louis Bostic's father.

Q. Well, you had the magistrate along with you?

[fol. 69] A. The magistrate was there. Somebody else brought him.

Q. Well, where did this hearing take place? You said he was fully arraigned in answer to the question from Mr. Murdaugh a moment ago. You said that Louis Bostic was fully arraigned down there before the magistrate. My question now is where did this take place?

A. It was right near the scene of Sheriff Floyd's murder on the highway. He was killed a little a little ways off the highway and we went back to the scene.

Q. And is it not a fact that the magistrate was then acting in his official capacity as a magistrate in that he fully read out the charges which were pending against Louis Bostic?

A. As far as I know, that's right.

Q. Where were you standing in reference to close proximity to the magistrate when the magistrate read out these charges?

A. Well, I was walking on both sides of the road. I was over where the Sheriff was shot and different places, and I didn't hear all of that. That's what I'm telling you now, but I imagine other people here did hear the whole thing.

Q. You did not hear the magistrate, then, read out the charges to Louis Bostic?

A. I heard someone read the warrant; I don't know who read it, but somebody read that warrant, but I can't remember who did.

Q. I thought I understood you to say a moment ago the magistrate did?

A. I don't know. I think he did. I just don't know which one read it.

Q. You say you think he did, sir?

A. But I'm not certain.

[fol. 70] Q. Louis Bostic had no conversation with the magistrate?

A. I don't think Louis Bostic had but very little to say.

Q. Well, what did he say, sir?

A. If he said anything that morning, I didn't hear it.

Q. I thought you said he didn't have but very little to say?

A. He didn't talk to his daddy to amount to anything. I especially noticed that he didn't seem to want to talk to his daddy and his daddy kept saying what a good man he was and things like that.

Q. So now, as I understand, all of the evidence was reviewed before the magistrate on the morning of January 19th; that is to say, the fact that an oral confession had been entered the day before, the fact that written confessions were obtained by you the night before, all of this was brought to the attention of the magistrate at this hearing?

A. No, I didn't bring it to the attention of the magistrate. I talked to the solicitor about it.

Q. Well, the solicitor was the prosecuting lawyer in this thing, anyway. It is his duty to present the evidence, isn't it?

A. That's correct.

Q. And these things were called to the attention of the solicitor on January 19th?

A. That's right. That's routine. We give the solicitor copies of all the statements, or the majority of the statements in a criminal case.

Q. So that the evidence was reviewed for the sake of the solicitor and the magistrate read out the formal charges at this hearing on the morning of January 19th?

A. I told you I can't remember who read the warrant. [fol. 71] I don't remember that because I was going on both sides of the road and there were a good many people standing in the road.

Q. Now may I ask you whether or not Louis Bostic was represented by a lawyer at that time?

A. He was not.

Q. Chief Strom, could you tell us whether anyone else was present at this hearing other than yourself, Solicitor Murdaugh, and the magistrate?

A. Sheriff Raymond, who is the present Sheriff, and I believe Lt. Wyndham and Agent Aubrey Rountree.

Q. All of these men attended on that morning?

A. I believe that's right.

Q. And I believe you also said that Louis Bostic's father was there?

A. Louis Bostic's father was there and Louis Bostic.

RECROSS EXAMINATION

BY MR. MURDAUGH:

Q. I don't believe the magistrate in Ridgeland at that time had an office, did he, Chief, or don't you know?

A. I don't know, sir.

Q. The reason why they held it there was it was just more convenient for you and the magistrate to meet there. Is that the reason?

A. We knew where to come to, yes, sir.

Q. And I believe you had previously related to me what had transpired the day and the night before?

A. That's right.

Q. Then when the actual hearing before the judge was had, you were not present, were you, when the warrant was read? Or don't you remember that?

[fol. 72] A. I remember somebody starting to read the warrant, but I remember I was walking across the road because I wanted to see where the man was sitting who

shot the Sheriff. I was trying to see some bushes that were mashed down. That's what I was doing.

BY MR. PERRY:

Q. As I understand, the magistrate was acting in his official capacity as a committing magistrate?

A. That's right, sir.

BY THE COURT:

Q. Chief Strom, on that particular occasion, did the accused, Louis Bostic, talk to his father?

A. His father was there and attempted to talk to him but Louis Bostic didn't care to communicate with his father.

Q. Did you see that occur?

A. Yes, sir.

Q. Where was the accused, Louis Bostic, when that took place?

A. He was sitting in the automobile and his father walked up to the automobile and attempted to talk to him.

Q. Had he seen his father previously? Had he seen him the evening before?

A. He had not.

BY MR. MURDAUGH:

Q. You are talking about after you got custody of him?

A. When he was in my custody he didn't see his father.

SHERIFF JOHN P. RAYMOND, being first duly sworn, testifies as follows:

[fol. 73]

DIRECT EXAMINATION

BY MR. WASHINGTON:

Q. Sheriff Raymond, you just heard the testimony of Chief Strom with reference to a hearing that took place before the magistrate on the roadside on the morning of

January 19th, and I ask you whether or not you were present at that hearing, sir?

A. I was.

Q. Can you describe to us what happened at that hearing?

A. Mr. Murdaugh, the solicitor, read the warrant charging Bostic with the murder of Sheriff C. W. Floyd, before the magistrate.

Q. And what else happened at that time?

A. When Solicitor Murdaugh read the warrant and told him what he was charged with, he said "You don't have to admit or deny, you don't have to say anything except that you are being charged." He said, "If you want an attorney, we'll help you and assist you in any way to get an attorney." He told him if he wanted to see his father or talk with his father at any time, he would make that arrangement for him.

Q. And these statements that you just describe were made after the reading of the warrant?

A. That's right.

Q. Now what other proceedings were held?

A. That's all.

Q. Did the magistrate make any remarks or make any statement? What did he say?

A. I don't remember exactly the words of the magistrate, what he said. I remember the solicitor reading the warrant to him.

Q. And at that time, of course, you knew, did you not, [fol. 74] that Bostic was not represented? He didn't have a lawyer there at that time?

A. No, he didn't.

Q. On the afternoon of January 18th, Sheriff, during the afternoon hours, where were you located, sir within the county of Jasper?

A. I was in the lower part of the county.

Q. And you did not have any information about this occurrence until you got back that evening?

A. That's right.

CROSS EXAMINATION

BY MR. MURDAUGH:

Q. Mr. Raymond, also before the committing magistrate Hiers, state whether or not the defendant was advised that if he wanted a preliminary hearing he could have one at any time?

A. Yes, sir he was.

Q. State whether or not I told him, "If you want a preliminary you don't even have to demand one in writing." Just get in touch with you or Chief Strom or myself or the magistrate and he could have one at his convenience?

A. That is right, sir.

Q. After I read the warrant to the defendant, he didn't say whether he was guilty or not guilty? He just kept quiet, didn't he?

A. That's true.

Q. Nobody asked whether he was guilty or not at that hearing?

A. Not to my knowledge.

REDIRECT EXAMINATION

BY MR. WASHINGTON:

[fol. 75] Q. Sheriff Raymond, how did this proceeding start? Did the magistrate say something or who said the first word?

A. I believe Mr. Murdaugh informed Bostic that he had secured a warrant charging him with the murder of C. W. Floyd and that he was going to read the charge to him, and then he proceeded with the reading of the warrant.

Q. And did he get the nod or permission of Magistrate Hiers before he started to do that?

A. I think he did. They were standing right close together.

Q. And you cannot recall anything that was said by the magistrate with reference to this proceeding?

A. No, sir, I don't know what he said.

Q. The magistrate, however, did not himself advise the defendant or Bostic at that time as to any rights? It was the Solicitor, is that right?

A. The solicitor read the warrant and informed him as to his desires for an attorney and as to the preliminary. Now, if the magistrate did, I don't know.

Q. You don't recall?

A. I don't recall.

Q. Did the solicitor make any statements to the magistrate at that time as to any evidence that they had already received or collected as a result of their investigation?

A. I believe he has talked to the magistrate about the evidence a short time prior to this when they were fixing up the warrant; when the magistrate was fixing the warrant, I think that was brought up. Now I don't know.

Q. I don't remember whether the warrant was prepared at the scene or whether it was prepared back in [fol. 76] Ridgeland, but I do remember hearing some statements as to that he had made an oral admission or a written admission or something, that he had admitted it.

Q. In other words, these things were known to the magistrate at the time the reading of the warrant took place?

A. I think so.

RECROSS EXAMINATION

BY MR. MURDAUGH:

Q. Mr. Raymond, why was the defendant not arraigned on the evening of January 18th?

A. Well, one of the Sheriff's brothers is the magistrate for the district in which this thing occurred. The other magistrate, Mr. Hiers, from Ridgeland that night was out of town. Now I imagine he was up in the Pineland area somewhere.

Q. Did you try to locate him?

A. Yes, sir.

Q. Could you locate any available magistrate that night to have the defendant arraigned?

A. No, sir.

Q. What was the earliest possible time to take the warrant out and have the defendant arraigned?

A. Well, it was after dark and Chief Strom and myself talked about it and he said he thought the advisable thing to do was to bring him back the first thing the next morning and we would get in touch with the magistrate.

Q. And was it done at the first available opportunity?

A. Yes, sir, it was.

Q. Now, Sheriff, at the trial of this case was there any highly tense prejudicial atmosphere existing in the courtroom?

A. No, sir.

[fol. 77] Q. Have you seen larger crowds for murder cases in Jasper County?

A. I believe I have. I've seen them just as large.

Q. Was there any disorder or any prejudice or any conduct unbecoming a proper citizen that occurred there?

A. Not a bit.

Q. As a matter of fact, state whether or not the defendant was brought back to Ridgeland and left in the jail for several days prior to the time of court? About a week, wasn't it?

A. Yes, sir.

Q. And at any time did you have to employ any extra guards around the jail or extra precautions?

A. No, sir, I did not.

Q. Was the defendant, so far as his apprehension was concerned, treated like any other defendant in jail?

A. He was.

Q. Did you have the militia or anything there to protect him?

A. No, sir, I did not.

Q. Other than the officers who were connected with the case and if I remember correctly, there were about 10 or 15 officers testified during the trial, other than those officers and the officers who had business with the court, were any other officers present?

A. Not to my knowledge.

REDIRECT EXAMINATION

BY MR. WASHINGTON:

Q. During the period before Judge Harris, did you hear Louis Bostic make any statements whatsoever?

A. I did not. He was asked, I don't remember whether it was just before or just after, he was asked if he wanted to talk to his daddy. His daddy came to the car [fol. 78] and talked with him and Louis would not talk to his daddy. Now I don't remember whether that was just prior to or just after.

Q. But that's the only thing you recall him having said?

A. That's right.

BY THE COURT:

Q. This was at the time of the arraignment before the magistrate?

A. Yes, sir.

Q. Did you hear anybody discuss, the solicitor or anyone, discuss with Louis Bostic's father the matter of counsel to represent him?

A. No, sir, I don't believe I did. I heard him discuss it with Louis.

(Noon Recess)

AFTERNOON SESSION

MR. R. L. SENSENBACH, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. WASHINGTON:

Q. Would you please state your name and your office, sir?

A. I am R. L. Sensenbach, Clerk of Court of Jasper County.

Q. Now you are also a resident of that county?

A. Yes, sir.

Q. Mr. Sensenbach, how long have you resided in the county of Jasper.

A. Some 35 years.

Q. And for how long, sir, have you held the office of Clerk of Court?

[fol. 79] A. Fourteen years.

Q. Being a resident of the county, sir, are you familiar with most of or a large number of the citizens who reside in that community?

A. Probably 90 per cent of them.

Q. And you are familiar with those persons in the citizenry who might be Negroes as distinguished from those persons who might be white?

A. That's correct.

Q. As the Clerk of Court, Mr. Sensenbach, are you not also a member of the Jury Commission of that county?

A. That is correct.

Q. Mr. Sensenbach, do you have any information relative to the proplation of Jasper County?

A. Nothing more than the 1960 census report.

Q. Now, according to that census, what is the population?

A. I think it's in the vicinity—I don't remember the exact figures—but in the vicinity of thirteen or fourteen thousand.

Q. Do you have any idea or any knowledge as to the proportion of Negroes to white persons among that population?

A. No exact figures, no.

Q. Well, do you know whether or not there are more whites than Negroes or more Negroes than whites?

A. It's my opinion that there are about as many colored as there are white and perhaps a few more.

Q. Mr. Sensenbach, you are here under subpoena to appear for both the State and the defendant?

A. That is correct.

Q. And you are also under subpoena to bring with you [fol. 80] the registeration roles of the nine precincts of that county of the General Sessions Journal No. 3 Volume?

A. That is correct.

Q. And you have those volumes with you, sir?

A. I do.

THE COURT: Are you going to offer those in evidence?

MR. WASHINGTON: Yes, sir.

THE COURT: Any objection?

MR. MURDAUGH: We have no objection.

(Nine registration books marked as Exhibits C. D, E. F, G, H, I, J, and K, and General Sessions Journal No. 3 marked as Exhibit No. L offered and received in evidence.)

Q. (By. Mr. Washington) As a member of the Jury Commission, Mr. Sensenbach, do you make a determination periodically as to the total number of qualified male electors?

A. Once every year we empty the old box and supply a new one for the ensuing year.

Q. May I ask you, sir, the total number of male eligible electors in December of 1961?

A. I have no way in the world to tell you that now.

Q. Could you give me an approximation?

A. No, I couldn't do that because we go by the Code section setting the number to be placed in the box, which is two out of three, two-thirds of the qualified male electors, and what that number is now, it varies of course, from term to term. What is was at that time or what it is even this year, I don't remember since last December what it was.

Q. Was it more than a thousand, sir?

A. I don't know, sir.

Q. Was it less than a thousand?

[fol. 81] A. I think it was less than a thousand. That would be my guess, that it was less than a thousand.

Q. And is is your testimony also that in December of 1961 you put a two-thirds—

A. For the past fourteen years, to my knowledge, we have put in at least—sometimes we have more, but it says at least two-thirds of the qualified male electors, and every time for the fourteen years, to my knowledge, and belief, there has been at lsast the two-thirds in.

Q. Mr. Sensenbach, you as a member of the Jury Commission as the other Commissioners, you are, of course, aware of the fact that the name that you choose out of that are marked and designated by race in your registration books? Is that correct, sir?

A. In the registration books, yes.

Q. And this is the place from which you choose the persons who go in the box?

A. It's the only source we have from which to choose.

Q. Do you have any idea, Mr. Sensenbach, as to the total number of Negroes as shown by your registration books there that were qualified for jury service?

A. I have no way of remember that. I probably knew last December when we prepared the box, that is, approximately, but I had no occasion to try to remember it.

Q. Well, could you give us an approximation?

A. I couldn't even do that. I don't remember. I know there was a bunch of them but to say now ten or a hundred, I couldn't tell you.

Q. Now, sir, as to the individual panels for each term of court, that is the responsibility of your Commission, too, is it not?

[fol. 82] A. That is correct.

Q. You say that you know 90 per cent of the persons who live in that area by designation of their race?

A. I know most of them personally, and I could tell you where they live.

Q. So that you would be able to identify the persons who had been called for jury service if they were Negro, in the General Sessions Journal?

A. I know as soon as I see their names whether they are white or colored. Now we have some duplication of names. For instance, we have three or four Joe Browns and some are white and some are colored.

Q. I show you, sir, the Grand Jury list and the Petit Jury list called for the February, 1961 term and ask whether or not you would designate all of the Negroes on that list that you can identify.

A. If there is a Negro on there, I don't recognize it. I have looked at them hurriedly. I know every man on here personally.

Q. But you recognize no Negroes?

A. That is correct.

Q. You are talking about both the Grand and the Petit?

A. There isn't a Negro there.

Q. I show you the Grand Jury list and the Petit Jury list for the February 1960 term of the General Sessions court and ask you to take your time, sir, and see whether or not you can identify any of those jurors as Negroes?

A. I don't recall the 1960, this particular jury, but we have one here by the name of Seblest (?), we have both white and colored by the same name. Now whether [fol. 83] this would be one of them or not, I couldn't tell you and we do not differentiate them in our court records and there would be no way to remember it, if we had any colored on the jury. Outside of that, that's the only name I see that there was a possibility.

Q. In fact, you would go through this journal and you would not be able to find any person there that you know is a Negro? Is that right, sir?

A. No, that is not correct. there are some in some of these juries because we have had them sitting on juries, but to remember the term of court—we have sometimes four, five or six terms a year and I wouldn't remember any particular sessions, that is, as to jurors. Most of the time, if I get there myself, court is over.

Q. Do you forget the names of the Negroes and the white people, too?

A. I just pay it no more mind after I'm through with the court. I'm through with that end of it and glad to get rid of it in most instances.

Q. Please indulge me, sir, and look at the Grand Jury list for February 1959 and the Petit Jury list?

A. There is one colored here that I have run onto already, Tony Brown. We have another one here who might be colored, but I think it is a white one. There is one here that I am definitely sure was colored.

Q. You identified two persons, sir, in the February term, 1959?

A. One that I'm certain of and the other that could be a duplication. I rather think it was white, but I couldn't sware to it.

Q. And you identify those persons as being on the Petit Jury?

A. That's right, sir.

[fol. 84] Q. Now I show you the list of Grand Jurors and Petit Jurors called for the February 1958 term and ask you, sir, to identify any persons you might know there to be Negroes?

A. I do not recognize any as such.

Q. Now, sir, you say you know that some have served on juries and I wonder whether or not you could give us an approximation of the number of Negro Jurors called to the Grand Jury service for the year 1958 to the present time?

A. I couldn't tell you. I know we have had some but now to tell you the exact amount—like I say, half the time when I go there, there will be hold-over juries, and I have to get the list to see who was on

Q. You serve as Clerk of Court and you are in attendance at the sessions?

A. I haven't missed one in fourteen years.

Q. I'm asking you whether you've ever seen a Grand Jury sitting since 1958 with more than one Negro sitting on that jury or more than five?

A. I don't think more than five. I don't think on a Grand Jury there's been more than one or two at any one term that I can recall.

Q. Specifically, sir, has there been more than one sitting on there?

A. I do not remember. I know that we had one or two on. Now whether they were at the same time or two different times, or terms of court, I do not recall.

Q. That is the Grand Jury?

A. Speaking of the Grand Jury only.

Q. When was the last term of court, sir, that was held [fol. 85] of the General Session of Jasper County?

A. The last term was in May, 1963.

Q. Were there any Negroes called for jury service during that term, sir?

A. I believe there were.

Q. Can you recall whether it was less than five or more than five?

A. It was less than five but I don't remember. We didn't have too much court, as I remember, and I don't remember the exact amount. Like I say, I don't even try to remember. That's one thing I'm glad to get rid of and that's the end of it with me.

Q. Yes, sir, but you do have a chance to see them because you are in court?

A. Oh, yes, and I know them if they are there, but like I say, we have at least four to six terms of court a year and very often they get mixed with one term of court or another.

Q. And I ask you whether or not you have any awareness of the number of Negroes who sat on the Grand Jury in the term preceding the May term, which must have been the November term, 1962?

A. We had a term in February of 1963.

Q. Were any Negroes on the Grand Jury at that time?

A. I do not recall any on the Grand Jury. It's very seldom we have a Petit Jury without one or two of them, at least, but I don't remember any on the Grand Jury for the year 1963.

Q. Now, sir, you say that you as a member of the Jury Commission have no recollection of the specific number of Negroes who generally served during this period? Is that correct?

A. I've had no reason to try to remember.

Q. Do you as a member of the Jury Commission make [fol. 86] a conscious effort to exclude from your mind the race of a juror called?

A. Do you mean in selecting or polling a jury? There is absolutely no distinction made.

Q. I didn't ask you that. I asked you whether or not you make a conscious effort to pay no attention to the race of the jurors that are called?

A. You will have to clarify your statement?

Q. Well, sir, you say you cannot recall seeing a specific number of jurors that you can remember at any given term of court and I gather, sir, that you do that because you don't want to think about the race of the jurors?

A. No, it isn't that, but as a rule when we have a colored juror or jurors serving, they sit with the audience

over there, most times, unless they are called on the jury, and it's hard to differentiate in the group of colored people and to remember whether there are one or two sitting there by themselves and I just don't try to remember. If you have seen our court in General Sessions, you know I'm a little bit dizzy anyway.

Q. Yes, sir. Now let's go to the place at which your Commission is sitting. When you draw the names of the jurors out of that box, you say you recognize 90 per cent of the people? Can you identify as you draw as to whether or not you have drawn a Negro or a white juror?

A. In most instance I know immediately whether it is colored or white except where you have a duplication of names.

Q. Now, sir, how long did you say you were serving as Clerk of Court?

A. Fourteen years.

Q. And were you acting in that capacity in the year 1954?

[fol. 87] A. I was.

Q. Do you recall during that term that there was an order of Judge Henry Johnson which squashed an indictment on the grounds that Negroes had been systematically excluded from the jury?

A. I know all about that case.

Q. Now, sir, after this order squashing the indictment, what did you as a member of the Jury Commission and the other members of the Jury Commission do with reference to remedying this situation?

A. As far as I know, we did it according to law before and we did it according to the law afterwards. I still say we were wrong in getting in that box. Now that's my personal opinion and not the court's opinion.

Q. So that as a Jury Commissioner, you operated your situation exactly the same afterwards, after the order as before the order? Is that correct?

A. I would say so. We had more qualified registrants after all of that then we had before and we are still getting more as the drives have been put on by the NAACP for registration. We are getting a greater number of colored registrants which we had very few along about that

time. I mean, comparatively, very few along about that time.

Q. So that there has been no change in the procedure?

A. Not to any great amount. I wouldn't say that that didn't have a little influence, but not to any great extent, I don't think so.

Q. Did you after that time make a conscious effort to see that Negro male electors were placed in the box?

A. There has been male electors placed in the box, to [fol. 88] my own personal knowledge.

Q. Do you have any idea, sir, as tohow many Negro male electors were placed in the box?

A. I have no idea as to the number except to say that in proportion to the male white electors registered and qualified, there are as many colored in proportion to the total number in my opinion.

Q. And, of course, this is true because of your effort to see that there is this proportion?

A. We made sure there was.

Q. A few minutes ago, Mr. Sensenbach, you in reply to a question said that you never had had more than five on a Grand Jury at one time?

A. We never had that many on a Grand Jury that I can recall, no.

Q. Can you recall any time when you had more than two sitting on a Grand Jury at one time, of your personal knowledge?

A. Not that I can recall offhand.

Q. So that, at most, you have only been able to observe one Negro serving on the Grand Jury at one time? Is that correct?

A. In my recollection.

Q. Both as a Jury Commissioner drawing and as an officer of the court observing?

A. That is correct.

Q. And I don't believe you said that you had one or two Negroes ever to be called for the Petit Jury panel?

A. We've had more than that. We've had more than two or three. I think we've had probably as high as four or five on various occasions and I remember distinctly one term of court that was called off. We didn't hold

court, it was in the May term and some of our delegation were tied up in Columbia. The term was called off and [fol. 89] we had quite a few of them on there. I say quite a few, there must have been a half dozen or more but the term wasn't held so therefore, they went back in the box.

Q. That was the May term?

A. I believe it was the May term, and the General Assembly had not yet adjourned and you know how these lawyers plead immunity to court when the General Assembly is in session, and it was called off.

Q. You say you believe that was in 1960?

A. I don't remember what term it was. It's been a couple years ago but I remember drawing a good many colored.

Q. Now, Mr. Sensenbach, the question I put to you now is whether or not there is any reason that you can give at this time why it is that you never have observed, or you as a Commissioner have never drawn for service on the Grand Jury more than one Negro for service?

A. I can only answer that with a question. If you can tell how somebody as unlucky as I am can punch a whole punchboard and not win a thing, then I can answer your question. I just don't know. The ones that went to get on jury don't get on, and the ones that went to get on cuss me out because he doesn't get on. I've had that happen this past week drawing a jury. Now don't ask me how come somebody who never wants to get on a jury gets on a jury gets on it every time. I don't know. You pull them every time. Those capsules are stirred and I defy anybody to tell the difference between any capsule in the box or to tell how they are going to be drawn out. They are stirred well before we pull them out and they are pulled out and read off and unless we know them to be dead or moved from the county, they are set down [fol. 90] on our venire.

Q. So you never inquire into the other qualification of the juror that you pull, such as their age, etc.?

A. Well, they are not in there if they are over 65 and if are and we don't know it, the judge finds that out in court and excuses them. We have a few that we get in

there that we forget about sometimes that are physically disabled and it's easy to forget them. Sometimes we get one of those in. Should we draw one of those in if we know he's coming with a doctor's certificate, he has been excused every time and we set him aside. But other than that, they are all set down regardless of race or creed or anything else.

Q. So that when you pull this name out, you do examine his qualifications when you see his name?

A. No more than to know that he is available. If he's available for court in any one of those three categories, I mean excluding those three categories, he is set down.

Q. Of course, there is nothing on thses capsules that you draw out that would have a designation as to race on them?

A. If there is any man who can tell a difference between any of those capsules in there, I'll pay him well to tell me which is which and who they are.

Q. No, sir, I'm asking after you pull it out, sir?

A. No, way until you open it up and read the name.

Q. Then, of course, it is not designated on the slip?

A. Not at all. It's just a typewritten name and they are all with the same typewriter.

Q. Do you know, Mr. Sensenbach, the total number of persons that were registered in Jasper County for 1961?

[fol. 91] A. I have never counted them.

Q. Well, sir, how could you determine how many male electors there were?

A. Well, we have to count the males, but you said qualified voters. That takes everybody in, women and everybody else, and I couldn't tell you what the total number is.

Q. And you could not tell us either at any given time the total number of male electors?

A. No, because we don't try to remember them and the last time we prepared a box was just about a year ago. We prepared it after the Fall term in December, after the Fall term of civil court, the first week in December, somewhere between there and the first of the year.

Q. Does your mind recall any time where you have as a Jury Commissioner drawn a Negro juror and rejected him on one of these grounds that you have mentioned as to physical disability?

A. Most of them that are qualified are in there to serve and they don't move out of the county so much and I don't ever remember of ever having pulled one who had died. Maybe once in a while we pull somebody out that we know has died since we fixed the box and naturally we set them aside, but I don't ever recall that happening to any colored.

Q. And, of course, you say therefore and your testimony now is to the effect that the ratio of Negro Jurors actually called for service to the total number is a result of chance? Is that correct, sir?

A. No chance to it. It's all mathematic, more or less. Of course, we have more than is required to put in there but we usually put in a little more than we are required to.

[fol. 92] Q. A little more of who?

A. A little more than is required, that is, the two-thirds. You see, that's a minimum requirement set by law by your Code.

Q. Has the Commission to you knowledge ever made a conscious effort to place at least one Negro juror on the Grand Jury?

A. No, because we draw them out and we let them hit as they fall. We don't keep rejecting whites until we get a Negro. We don't keep rejecting Negroes until we fet a white. If that is pulled out of the box and except for those three instances which I mentioned, he is set down on that venire. If he moves out of the county, we know, like if he goes to the Armed Forces. In Hardeeville, at lot of people come over from Savannah to register and vote a time or two and then the move back to Savannah and we know of our own personal knowledge that he has gone and is not available or he is dead, and we know that. Sometimes we get down there that we have forgotten about, that don't know about that, but not very often.

Q. And you say just as you never reject any white person from service just because there is a Negro not on there yet the same thing is true on the other side of the corner?

A. I'll swear to that.

Q. And you never have no purpose to try to keep Negroes from the Jury?

A. If we pull them out of the box and it happens to hit a colored one, we'll hit it; if it's white, it's white. If they are all one way or all the other.

Q. And, of course, you have adopted this policy without legal advice, sir?

A. We had legal advice back when that court case was in 1954.

[fol. 93] Q. What was that advice, sir?

A. I don't remember exactly what the advice was except that we should not show any discrimination. I mean, it boils down to that one word.

Q. Yes, sir, and I'm asking you now, sir, as I asked you before what changes of procedure did you take in the light of that advice?

A. Well, I figured that we were doing about what was in there and we continued to do the same thing that was fair and let the fair representation of the colored people in proportion to their registration, and I still insist it's so.

Q. You saw that you did receive advice and you say that you did not act on that advice?

A. Well, I wouldn't say that I wasn't influenced some, but I didn't think it affected us like it did in some other counties, because in my opinion there were some counties that didn't have any colored people in the box and never have had. That's my impression, I may be wrong, but so I've heard. That's hearsay information.

Q. Well, did you make a conscious effort afterwards to increase—

A. We made particularly sure to check very close and see that we had a fair representation. I'll put it that way.

Q. And in your opinion, sir, what do you consider to be a fair representation? Did you take the total number and make a mathematical determination?

A. Approximately. It's hard to tell that. You have a good many that you have to strike off and are disqualified to begin with.

Q. But you attempt to maintain a proportion, do you not, sir?

A. That's right. I said fair. Maybe I didn't say a [fol. 94] representation, I said a fair representation.

Q. And out of approximately 8000 total qualified male electors, 300 of which were Negroes, what would you consider as a Jury Commissioner to be a fair formula?

A. Well, now that I haven't studied. I don't know what's on the rolls now and won't until we go to make up a new box and last year I have forgotten the number. I did count the number but to remember what it was at that time, excluding your qualified male registrants, Negroes, I did know but I don't know what they are now.

Q. I'm just asking about 300 Negroes out of a total of a thousand, what would be your concept as a Commissioner of a fair proportion?

A. Well, with the representation of the county and the ones that are qualified to serve, I couldn't tell you without I studied them over and saw the qualifications of the juror. We have some that can't read and write barely, and yet they have been registered. Would you want him to judge you or anybody else? I'm going to strike a white man like that if I know it, and I have to boil them down to what I figure is—I say not I, we figure are qualified.

Q. I thought I understood your testimony a few minutes ago to say that you can't recall any time that a Negro was drawn and rejected?

A. I'm talking about drawing on the jury panel. Once he's in the box is what I said. I'm not making up the list. That was drawn for the jury and that's the way I answered it.

CROSS EXAMINATION

[fol. 95] BY MR. MURDAUGH:

Q. Mr. Sensenbach, so this will appear in the record, in December of every year you and the County Auditor and the Superintendent of Education in Jasper County—

A. No, the Probate Judge.

Q. Make up a jury list?

A. That is correct.

Q. And under the statute you are required to use tow out of every three qualified male electors?

A. That is correct.

Q. Is two out of every three white male qualified electors of good moral character in that box?

A. I would say so.

Q. Well, it's either yes or no. If they are not in there, we ought to give him a new trial now. Are they in there?

A. I think they are all qualified.

Q. How about colored? Is two out of every three colored—and I'm talking about male Negroes between the ages of 21 and 65 of good moral character in that box?

A. I think so.

Q. Now has there been any systematic exclusion of colored people because they were colored?

A. Not any conscious one, not that I know of.

Q. Where are you from originally?

A. I came from Pennsylvania.

Q. Where you were raised there is no feeling among the races there, is there?

A. Where I came from we didn't have any colored people at all. I came from a little town up in the moun- [fol. 96] tains and there were no colored people at all where I came from.

Q. Mr. Sensenbach, I don't believe ever in the history of Jasper County since I can remember, ever kept a colored man or a colored woman from registering if they were qualified to register, have you?

A. I think way back yonder they could always register if they were qualified.

Q. Counsel asked you the difference between before 1954 and after 1954. You've always maintained that the colored people were in the jury box?

A. I think they found that wehn they got the judge's order to get in the jury box, and I think they were surprised that they found as many as they did in there.

Q. Didn't it show a bigger proportion of colored then it was to white?

A. The number that was registered qualified, yes, sir.

Q. Now since 1954, including 1962 when this case was tried, state whether or not there were two out of every three of the qualified Negro males in that box?

A. Yes, I think they were all qualified that were in there.

Q. As I started to ask you a while ago, in December you and the other members of the Jury Commission make up a box that under the law you are supposed to have two-thirds of the qualified electors?

A. We have a minimum of two-thirds out of the qualified electors.

Q. That's put in a big box and approximately two weeks before court you and the Jury Commissioner draw out 40 in your county?

A. We draw 40 Petit.

[fol. 97] Q. And the first of each year 12 Grand Jurors?

A. Twelve with three alternates.

Q. And they are put in the box and at the trial they are pulled out by you as Clerk of Court or by your jury girl?

A. That's right.

Q. And at one time in recent years wasn't there as many as five colored jurors on the jury?

A. I think there were on the Petit Jury.

Q. And the case involved here, Louis Bostic, state whether or not there was one colored Negro, or one Negro on the Grand Jury?

A. I don't recall.

Q. Can you look in your book and see?

A. I could look in my book and see but he didn't go to that date there of February 1962. I don't think you went to that in your questioning. You went from '61 back. There is one here, Clifford Hodges, who is colored who was on the Grand Jury.

Q. He was on the Grand Jury that acted on Louis Bostic?

A. Yes.

Q. State whether or not there were two Negroes on the Petit Jury?

A. Sol Baker and I have forgotten the other, but I remember Sol. Jesse Ehrlich, one living in Ridgeland and one living near Robertsville.

REDIRECT EXAMINATION

BY MR. WASHINGTON:

Q. You have just pointed out Negroes identified on the February 1962 Grand Jury and Petit Jury?

A. That's correct.

Q. Who are they?

[fol. 98] A. Sol Baker who lives near Robertsville where this affair took place and Jesse Early is an auto mechanic living on the outskirts of Ridgeland and Clifford Hodges lives around the Hardeeville section.

Q. These first two that you point out are on the Petit Jury panel?

A. That is correct.

Q. And the third one is on the Grand Jury panel?

A. That's right.

Q. I call your attention to the May term of 1962 and ask you to do the same.

A. Well, of course, we had the same Grand Jury, and there is Clifford Hodges who is colored. Harmon L. Redmond is colored. That's on the Petit Jury. Frank R. Young, he was excused but he is a boy I know who lives down in the Armoak section.

Q. One final page for November 1962?

A. Well, of course, you still have Clifford Hodges who was colored. That hasn't changed for the year. I don't see any colored on the Petit Jury on that one.

Q. At the last term that year?

A. That's the last one that year and I don't have the other journal.

RECROSS EXAMINATION

BY MR. MURDAUGH:

Q. All these names that you have read off as being Negroes or whites as the case may be, is that from your memory? You had no designation or mark or anything?

A. It's just that I know them personally. That's the only way you can tell them.

Q. It is possible than you missed one in looking over it?

[fol. 99] A. It's possible in a hurry. I don't think so but it's possible.

BY THE COURT:

Q. You put in evidence certain documents that I know are the official records of Jasper County. Is there any objection at the conclusion of the taking of testimony today to these books being withdrawn and taken back in the custody of the officials of Jasper County?

MR. WASHINGTON: Your Honor, we introduced the registration rolls and the journal just for the purposes of getting the testimony and confirming it today. We would, however, if the State would have no objection, make a list which we would like to submit in substitution showing the total number of males registered and the total number of Negro males registered in the county for the years that we have in question.

MR. BRANDON: You are going to have somebody testify from the record what the record shows, aren't you"

MR. WASHINGTON: No, sir, we would think that if the State wants us to do it that way, of course, we could put someone on the stand.

THE COURT: Let's get away from that discussion and get back to what I'm talking about. I want to know whether they can take these records back or not.

MR. WASHINGTON: Yes, sir.

THE COURT: All right, it appears to me from these records that when a person is registered the date of the registration is marked so that it would be a simple matter in determining if anybody were registered after today, and you would know from the date of the registration that their names did not appear on this book when [fol. 100] the books were introduced in evidence. Is that correct?

A. That is correct, as I understand, sir.

THE COURT: So at the conclusion of the testimony today these can be withdrawn and taken back to Jasper County. However, all counsel in this case will have them available to them and if there are any further hearings, they will be brought back to the hearing by the officials.

Q. (By Mr. Murdaugh): You don't have anything to do with the registration books at all, do you?

A. Not one thing, sir.

Q. They have a Registration Board of Jasper County and those books?

A. That's right. I'm just simply custodian of those books.

Q. You have a fireproof vault where they are kept?

A. That is right.

Q. You have nothing to do and niether does the Jury Commission on the registration of people in Jasper County?

A. The only time I look at those books is when we make up a jury box, once a year.

MRS. WILHELMINA GOETZINGER, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. PERRY:

Q. Your name is Mrs. Wilhelmina Goetzinger?

A. Wilhelmina Wise Goetzinger.

Q. Mrs. Goetzinger, where do you live?

A. Ridgeland, S. C.

[fol. 101] Q. What official position do you have with the county of Jasper?

A. I am Clerk of the Registration Board.

Q. Mrs. Goetzinger, can you tell us, please, how many persons are registered in Jasper County?

A. No, I could not tell you that to date because I do not remember the last number that I posted.

Q. Can you tell us, please, how many qualified male electors there are in Jasper County?

A. No, not to date.

Q. Can you give us this information as of the beginning of the year 1962 at which time this case arose?

A. I can.

Q. What was that—

THE COURT: Which figure are you asking for at this time? You asked two questions, the total number of registrants and then the qualified male electors?

MR. PERRY: The number of qualified male electors would satisfy us as of January 1, 1962.

A. Well, the last registration date was December 4, 1961 and they were eliminating no male except those over 65, there was approximately 974 white and 256 Negroes.

Q. That's as of January 1, 1962?

A. That is correct.

BY THE COURT:

Q. There were none registered between December 4, 1961 and January 1, 1962. Give me that number again, please, ma'am.

A. 974 Whites and 256 Negroes.

Q. (By Mr. Perry) May I inquire as to what was [fol. 102] the next registration date after January 1, 1962?

A. February, but I don't know what the date was.

CROSS EXAMINATION

BY MR. MURDAUGH:

Q. The jury box is made up as of the people who are registered as of the 4th of December?

A. That's correct.

Q. Anybody registered in January, February of '62 would not be in the box that was prepared in December?

A. No, they would not.

Q. The total of everybody registered as of that date was how much?

A. 2,930.

Q. Now when you said that 974 white males and 256 Negro males, you are talking about people between 21 years of age and 65 years of age?

A. I am.

Q. That includes all preachers, doctors, school teachers, policemen and everything else?

A. It does.

Q. I mean, Your Board made no effort to see whether they were qualified or whether they were of good moral character or anything?

A. No.

COLLOQUY BETWEEN COURT AND COUNSEL

MR. PERRY: May it please the Court, that concludes the Petitioner's evidence on the petition for a writ of habeas corpus. We would like at this time to request leave to further amend the petition for a writ of habeas corpus in order that a matter which was developed in the [fol. 103] evidence here might be considered by the Court.

THE COURT: State what the matter is.

MR. PERRY: We desire to amend the petition for a writ of habeas corpus to allege the following: the Petitioner was denied due process of law under the 14th Amendment to the United States Constitution and under Article I, Sections 5 and 18, of the Constitution of South Carolina, in that he was taken before a magistrate and arraigned or subjected to other pre-trial proceedings without being represented by an attorney. We ask the permission of the Court to amend the petition to include that as a ground.

THE COURT: Is there any reason why the petition should not be amended to state that ground for relief?

MR. MURDAUGH: We have no objection, sir.

THE COURT: All right, sir, the petition will be so amended. Now I think in order to make the record official you might draw an additional amended petition without including all of the other grounds but simply stating this additional ground.

MR. PERRY: Yes, sir.

MR. LATIMER: May it please the Court, will that also include the other ground stated at the beginning of the case?

MR. PERRY: We could include it in the petition and it wws that the Grand and Petit Juries were irregularly constituted or illegally constituted because the jury box did not contain the statutory number of jurors. However, the testimony which was adduced in an effort to prove that allegation did not sustain it.

THE COURT: Include that in the petition so there won't be any question about it and the Court will have that matter before it.

[fol. 104] MR. HENRY C. WALKER, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. MURDAUGH:

Q. Mr. Walker, state whether or not you are a practicing attorney located at the Ridgeland Bar?

A. I am.

Q. How long have you been a parcticing attorney?

A. Since 1947.

Q. Also, are you Senator of Jasper County?

A. Yes, sir.

Q. Did you have occasion to be present at the trial of Louis Bostic?

A. I was.

Q. Were you associated either with the State or the defense?

A. No, sir.

Q. You were merely present as a spectator and observer?

A. Yes, sir.

Q. Now, Mr. Walker, the petitioner in his petition for a habeas corpus alleges this, that the atmosphere in which the petitioner was tried and convicted was so tense, prejudiced against petitioner, that he could not and did not get a fair and impartial trial against the appropriate Constitution of the United States Government and the State of South Carolina. Will you tell the Court in your own words what you observed about the trial so far as it being fair and impartial and whether there was any tense attitude.

A. Mr. Murdaugh, I saw no intense attitude or any bad atmosphere. I thought it was one of the most orderly tried cases I had seen in Jasper County in some time.

[fol. 105] Q. Was the courtroom any more crowded than it is for a big murder case?

A. No, sir.

Q. Were there any demonstrations or any undue number of law enforcement officers or anything of that nature?

A. No, sir, I don't think so.

Q. Now, Mr. Walker, I believe for a long time there have been colored people on both Petit and Grand Juries in that county have there not?

A. Yes, sir.

Q. Being a Senator, of course, you have something to do with the registration Board. I believe you appoint it?

A. Yes, sir.

Q. How many years have Negroes been able to register in that county without any intimidation or without any restraint whatsoever because of color, sir?

A. Mr. Murdaugh, I will have to make a statement to answer that question. I remember when Judge Waring was on the Bench, I do not remember what year, some 1948 or 1949, I'm not positive about that, Jasper County was made a party to a suit.

Q. You are talking about the officials of the Democratic Party?

A. Yes, sir, about voting rights. I appeared along with Mr. Purdy at that time to represent the Party officials of Jasper County. Judge Waring at that hearing dismissed Jasper County because Jasper County was then registering the Negro people.

Q. Has there since that time, to your knowledge, been any question about the registration?

A. No, sir.

[fol. 106] Q. What about the attorneys for the defendant? What is your professional opinion as to the manner in which they conducted the defense?

A. Mr. Murdaugh, I think those three fellows did their job as well as anybody could have ever expected any lawyers to defend anybody.

Q. You know lawyers sitting off to the side can think of more points than the lawyer trying a case, about like a card game. Do you know of anything they missed during the trial of this case?

A. No, sir, I do not.

(No cross examination)

MR. D. N. RIVERS, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. MURDAUGH:

Q. Your name is D. N. Rivers?

A. Yes, sir.

Q. Mr. Rivers, I believe you are a parcticing attorney at Ridgeland?

A. Yes, sir.

Q. State whether or not on February 5, 1962 you together with Mr. Brown and Mr. Malphus were appointed to represent Louis Bostic in this case?

A. Yes, sir.

Q. I show you this letter to refresh your recollection as to the date. Mr. Rivers, was the defendant made available to you and the other lawyers for conferences concerning the trial?

A. Yes, sir, approximately, I would say, ten days before [fol. 107] the trial Sheriff Raymond contacted us and in the meantime Mr. J. N. Malphus had also been appointed with Mr. Brown and myself to defend Louis Bostic, and approximately ten days before the trial Mr. Raymond notified the three of us that Louis Bostic was in the local jail and would be available to us at any time to go over the matter with.

Q. Now, Mr. Rivers, did you go around to the jail to see him?

A. Yes, sir, we did.

Q. Was there any great number of armed guards available around the jail to protect Louis Bostic?

A. No, sir, I saw no one but the jailer.

Q. Was there any feeling of animosity or prejudice or anything existing in that town like the mob feeling?

A. I did not see any.

Q. First, I'll ask you as to allegation No. D of the petition which alleges that the defendant did not receive a fair and impartial trial because the atmosphere was so tense and the prejudice existed at the trial. What about that, Mr. Rivers?

A. I did not see any of this. I thought the trial was very orderly. The crowd for the type of crowd in there although I had seen the courtroom filled before was very orderly. There was nothing out of hand and Mr. Brown and Mr. Malphus and myself discussed it among ourselves that there was nothing that disrupted us trying to present our case in the court.

Q. Mr. Rivers, I believe you are Editor of the Jasper County News?

A. Yes, sir.

Q. State whether or not in the weekly issue following [fol. 108] the trial of that case you carried an editorial in your newspaper commending the people in the county and the officials for the fair and impartial trial that was had?

A. Yes, sir, I did.

Q. Is that the editorial?

A. Yes, sir, that is.

MR. MURDAUGH: We offer this in evidence, if the Court please.

MR. PERRY: If it was written by Mr. Rivers, then we have no objection.

A. I wrote it myself.

(Editorial marked Exhibit M offered and recieved in evidence.)

Q. Now, Mr. Rivers, some question has come up about why a preliminary hearing was not held in this case. Can you tell the Court why you didn't ask for a preliminary hearing?

MR. PERRY: May I at this time state that if Mr. Murdaugh feels that we have raised this question, I would like to advise the Court that we have not raised this question.

MR. MURDAUGH: I will withdraw the question.

Q. Mr. Rivers, state whether or not the State furnished you and the other counsel with a full disclosure of what evidence the State had against your client?

A. Yes, sir they did.

Q. And insofar as the various confessions that were introduced at the trial, both oral and written, at any time

did any question arise in the minds of your three lawyers that the confessions were improper and should not be admitted in evidence?

A. I might say this in regard to that, Mr. Murdaugh, one of the written confessions Louis Bostic admitted to us that a copy had been given to him and he had lost it, [fol. 109] so we went back through Mr. Raymond and I think from you and you all furnished us with another copy of it which we had at all times of all of the written confessions which were given at the trial.

Q. At any time did any information that your client gave you was such that would make you believe that the confessions were improperly obtained? I'm talking about the use of violence or threats or duress or promise of reward?

A. No, sir.

Q. What about the jury, Mr. Rivers? I notice that during the trial of the case you made no motion about any systematic exclusion of the Negro race from the jury. Did you investigate that phase of the case?

A. The only part we investigated, Mr. Murdaugh, was when we received—of course, this was the first time in the year and there was a new Grand Jury drawn—we saw that of the twelve drawn there was one Negro drawn on the Grand Jury. We saw there were two Negroes on the panel of the Petit Jury. We did not know what precdntage they were supposed to be but we did know that the precentage of Negroes registered to precentage of whites in Jasper County was very small, not the population but the precentage registered, do with those being on the panel, and we discussed this. We did not go into the matter further.

Q. Were you all satisfied that there was no systematic exclusion of Negroes from the jury?

A. In our minds there was not.

Q. From your conversation with your client during the trial of the case, in your opinion were there any rights of the defendant violated when he was taken before the magistrate to have the warrant read to him?

[fol. 110] A. None that I knew of. I might say this, that we didn't know just in what manner that was done

at the time of the trial until we were appointed. This had happende prior.

Q. But you were aware of it then?

A. Yes, sir, at the time of the trial, because he stated to us that the warrant had been read to him. I don't remember if we went into exact details or where, but he did state there was and the warrant was read to him and we knew that had been done and we did not go into it any further.

Q. In your professional opinion, nine of his rights were violated by the reading of the warrant?

A. None that we knew of because we tried to go into everything we could think of.

Q. And Mr. Rivers, none of these objections that you have heard raised at this hearing today were brought to the attention of the Supreme Court, were they?

A. No, sir, not actually in the appeal to the Supreme Court.

Q. And had there been any merit in your opinion in these, you would have brought them up?

A. If we had though there was any merit, we would have certainly presented them. We will try to present anything we knew to the Supreme Court.

CROSS EXAMINATION

BY MR. PERRY:

Q. Mr. Rivers, I am told that at the outset of this matter, a motion for change of venue was made; however, that motion does not appear in the printed transcript of record. Could you acquaint the Court with that motion, please?

[fol. 111] A. In the statement on page one, it says, "On February 27,. 1962 the defense moved for a change of venue on the grounds that it could not receive a fair trial in Jasper County. Such motion was denied."

Q. Yes, sir, I had seen it in the statement but I did not see the text of the motion. I apologise.

A. It was not printed in the transcript part itself. When this came up, our attitude was from the popularity of Sheriff Floyd in Jasper County, with the friends that

he had in Jasper County, we knew we would be in better shape if there would be a possibility to try to the case in another county. We immediately started out, Mr. Malphus, Mr. Brown and myself, and tried to get some affidavits to that effect to present to the Court and we could not get any affidavits to do it, but we did make the motion as stated to the Court, that we had tried to get the affidavits and could not get them and the motion was denied.

Q. Was it at that time your opinion, based on your observation as a citizen of that county and as a practicing attorney of that county, that Louis Bostic could not receive a fair and impartial trial by reason of the popularity of the Sheriff?

A. I might say this, that we were not thinking only of the white people but of the colored people in our county. With the popularity of Sheriff Floyd, we knew that we would have a hard time getting twelve persons that were not practically all of them friendly and had a very close feeling to Sheriff Floyd, not that we thought they would be unfair whatsoever but it was just a metter of having a friendly feeling towards someone and we thought that if there would be a possibility to get it moved to another county, it would take that feeling out of the situation. [fol.112] Q. So, it was your early opinion of you all, actually, that he could not get a fair, impartial trial?

A. I don't say it wasn't that he couldn't get a fair and impartial trial. Our opinion was that in another county that friendliness between the people—and when I say that I mean all the people in the county—and the Sheriff would not have existed, in another county.

Q. So that, of course, aside from the fact that affidavits of other persons might not have been available, there of course was the knowledge of you as one of our elder statemen of that county?

A. Our oral statements to the court along that line.

BY THE COURT:

Q. Mr. Rivers, as I understand it, you and Mr. Brown and Mr. Malphus, that's Mr. Luke Brown, is it not?

A. Yes, sir.

Q. What's Mr. Malphus' initials?

A. J. N., "N" for North, Malphus.

Q. Were appointed to represent the petitioner at his trial in the Court of General Sessions in Jasper County?

A. Yes, sir.

Q. You were appointed by Judge Littlejohn?

A. Yes, sir.

Q. And you were appointed prior to the opening of the Court of General Sessions?

A. We were appointed on February 5 and court started on Monday, February 26. That was three weeks approximately before Court. Now the very week after that Mr. Brown and myself were appointed first and I think it was during the same week that he also appointed Mr. Malphus and sent Mr. Brown and myself notice that he was also [fol. 113] appointing Mr. Malphus to be with us in this representation.

Q. I believe you have lived your life in Jasper County?

A. Yes, sir.

Q. How about Mr. Brown?

A. No, sir, Mr. Brown has been there about 12 years.

Q. How about Mr. Malphus?

A. All his life in Jasper County.

Q. How long have you practiced law in Jasper County?

A. Fourteen years.

Q. Do you know Mr. Brown's tenure?

A. Twelve years in Jasper County and Mr. Malphus five years in Jasper County.

Q. So you represented the petitioner, then, at the time the court opened?

A. Yes, sir.

Q. At the time the indictment was presented to the Grand Jury?

A. Yes, sir.

Q. Following the presentation of the indictment to the Grand Jury and the return of a true bill, was the petitioner arraigned in open court in the Court of General Sessions?

A. Yes, sir, in the presence of Mr. Brown, Mr. Malphus and myself. We stood by him when he was arraigned on that Monday.

Q. With respect to your petition for a change of venue and your search for affidavits, certainly any three lawyers or any three people, for that matter, in Jasper County would know persons from whom they could get such affidavits? You three gentlemen would?

A. I think so, yes, sir, and I might say we tried colored [fol. 114] persons and white persons to get affidavits and could not get them.

Q. Did they refuse because of fear?

A. No, sir, they just said they would not sign any affidavit that a fair trial could not be obtained in Jasper County.

Q. Did they evidence their opinion to you that the petitioner could receive a fair trial in Jasper County?

A. Yes, sir, that was the reason they refused to sign an affidavit.

Q. Is there anything that you wish to state to the Court concerning this petition on grounds other than you have been asked about by petitioner's counsel and the solicitor and myself?

A. No, sir, the only thing I would like to say, speaking for Mr. Brown and Mr. Malphus, of course, it was a job which it was something we did not relish but we were appointed, we took the job, we did the best we possibly could. We had full cooperation with the officers giving us any information and anything they could do to help us. We went through the trial, I think the transcript will show we did not stint with our cross examination in trying to bring out everything we could, our objections, and we went so far as to carry it to the Supreme Court and we tried to do everything we could. And it was just one of those things we were up against at the trial.

THE COURT: I feel that in view of the fact that Mr. Rivers is on the witness stand and actively engaged in the defense, that through him the transcript of record of the trial as it was presented to the Supreme Court should be offered in evidence. Is there any objection to that?

MR. PERRY: No, sir, Your Honor, none from the petitioner.

MR. MURDAUGH: This is the transcript of record [fol. 115] that was agreed upon by you three lawyers and myself as representing the State?

THE WITNESS: Yes, sir, that is.
MR. MURDAUGH: We offer this in evidence.

(Transcript offered and received in evidence as Exhibit N.)

MR. LUKE N. BROWN, ESQ.: being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. MURDAUGH:

Q. Mr. Brown, your name is Luke N. Brown, Jr.?
A. That's correct.
Q. You are a practicing attorney from Ridgeland, S.C.?
A. I am.
Q. Were you one of the three attorneys appointed to defend Louis Bostic in his murder trial in February, 1962 in his murder trial?
A. I was.
Q. How much work did you and the other two lawyers do? Give us a short sketch of what you all did.
A. Mr. Murdaugh, when we were appointed the first thing we wanted was a personal contact with Louis. It was immediately given us. Louis told us everything he could and pieced together with what he told us the statements that we had obtained and the requests that we asked and received from the officers, we had a full disclosure of all the evidence.
Q. The disclosure that was given to you in advance of trial, is that the same evidence that was presented by the State at the trial, sir?
A. It's the first time I ever tried a case that I knew [fol. 116] everything that you knew. I'll put it that way. We studied it hard and I'll be frank with you, I don't believe there is anything we could have done and I still say there is nothing we xould have done that we didn't do or try to do.
Q. Have you heard of the various grounds that have been raised in this petition for a writ of habeas corpus?

A. I have, sir.

Q. Did any of those come up during your all's preparation and trial of the case as to whether or not those grounds should be raised?

A. No, sir, we discussed all of them.

A. Let's go down the line. What about the confessions? Did any information you got from your client, was it such as to convince you that confessions were obtained improperly, sir?

A. Not—Your Honor, might I ask at this time whether anything he told us would be privileged at this hearing?

THE COURT: What's your position on that, Mr. Perry?

MR. PERRY: Your Honor, I take the position that it would be. Of course, with all respect to Mr. Brown, I believe, of course, as much for Mr. Brown's protection, I think, as for the petitioner's—

A. Let me qualify that, Mr. Murdaugh. I will say that we discussed it thoroughly with Louis and his parents and the colored people and white in the neighborhood.

BY THE COURT:

Q. Mr. Brown, before you go into that, you represented this man as his attorney.

A. I'm not going into anything he told us, Your Honor, if that's what you mean.

[fol. 117] Q. That's what I was thinking about.

THE COURT: Mr. Perry, Mr. Washington, and Solicitor, I'm going to rule on this matter. Any information that Mr. Brown may have obtained in his representation of the petitioner, in his defense of the petitioner in this case, would be privileged with the exception that any information that he has pertaining to the grounds on which this particular petition is based would not be privileged, and he may testify to such knowledge as he has or may have obtained in the representation of the petitioner insofar as it is directed to these particular grounds in this petition and the petition as amended.

Q. (By Mr. Murdaugh) Mr. Brown, at any time did the defendant or anybody else in his behalf—and when I say the defendant I'm talking about Louis Bostic, the petitioner in this case—give you any information that the

confessions that were admitted in evidence against him were not freely and voluntarily given?

A. No, sir.

Q. I believe during the trial of the case, as most lawyers do, you objected to the introduction of those confessions?

A. I did, sir.

Q. Did the defense put up any testimony to show that they were improperly given?

A. No, sir. We could find no evidence that they were not properly taken.

Q. And that included the statements of the defendant to you?

A. Yes, sir.

Q. Did you appeal that phase of the case?

A. No, sir, we did not.

Q. Why?

[fol. 118] A. Because we felt we could get no evidence on it, that we had exhausted it.

Q. Now did you investigate and come to a conclusion as to whether or not both the Petit and the Grand Juries were illegally constituted because Negroes were systematically excluded from the panels of each?

A. Mr. Murdaugh, we discussed it and we decided that the jury that had been drawn, the panel was fair. I discussed the panel with the defendant, the then defendant, his mother and father, and leading colored people in the community some of who are sitting back there now, and we couldn't decide that any of them wouldn't be fair. Anybody we felt there was any question about, we objected to for any reason.

Q. My question dealt with whether or not you came to any conclusion about whether the members of the Negroes race were systematically excluded from either the Grand or Petit Jury?

A. We reached no decision.

Q. In your 12 years of practice down there aren't you convinced that they are not systematically excluded?

A. I am, sir.

Q. And had they been, you would have raised a question a long time ago?

A. We certainly would.

Q. And during the trial of the case, Mr. Brown, state whether or not the atmosphere at the courthouse and the surrounding area was so tense and prejudiced against the petitioner that he could not get a fair and impartial trial under the Constitution of both the State of Couth Carolina and the United States of America?

A. There was no tension. Everything was calm. I've [fol. 119] had more tension in other murder trials than I have had there.

Q. At any time did anybody lose patience? You and I try a lot of cases against each other and we get made quite often, but during the trial of this case, at any time was there any hard feeling or any words of anger displayed?

A. No, sir.

Q. Are you satisfied that your client got a fair and impartial trial?

A. I am, sir.

Q. In your investigation of the circumstances surrounding his arrest on up until the trial and through the appeal of the case, were you aware at any time that the defendant was deprived of any of his constitutional right at that time?

A. At no time do I feel he was deprived. We were familiar with this hearing that you were talking about, up there at the scene. We were familiar with that at the time of the trial and prior to it.

Q. Are you convinced that he waived no rights and he was not deprived of any constitutional rights by that hearing?

A. I am of the same opinion now as I was then, that he was not. No, sir.

CROSS EXAMINATION

BY MR. PERRY:

Q. Mr. Brown, did you join in the motion for a change of venue?

A. I did, sir. I would like to add one thing, Mr. Perry. We were trying anything. We were knid of shooting the shotgun and we were trying to find out what we could

[fol. 120] come up with. We tried to get affidavits. I discussed it with all the white—many of the white and most of the colored people in that vicinity and I honestly felt that he could get a fair trial in Jasper County. Had I not, I believe I could have gotten some affidavits.

BY THE COURT:

Q. Mr. Brown, from your investigation of the occurrence where the warrant was read to the petitioner in the presence of the magistrate near the scene of the alleged incident, did or did not that constitute a preliminary hearing?

A. No, sir. We were familiar with it and we were asked by Mr. Murdaugh did we want a preliminary hearing. I believe, if I'm not mistaken, they even offered to continue the case if we were not satisfied in my mind that we were ready. In our opinion, we could have obtained a preliminary hearing and that was not wanted.

Q. You did not ask for a preliminary hearing?

A. We did not. We were of the opinion we knew everything we could have learned at a preliminary hearing.

Q. In the selection of jury in a case of this kind, the defendant in the case, in this case the petitioner, is entitled to ten peremptory challenges. Did you exhaust those ten challenges?

A. I know we didn't exhaust every one of them.

Q. You did not use the ten challenges?

A. We used a good many of them.

Q. But not the ten?

A. No, sir, we did not.

MR. J. N. MALPHUS, being first duly sworn, testifies as follows:

[fol. 121] DIRECT EXAMINATION

BY MR. MURDAUGH:

Q. Mr. Malphus, I believe you are one of the attorneys for the defendant in this case?

A. Yes, sir.

Q. Have you heard the testimony of Mr. Brown and Mr. Rivers?

A. Yes, I have.

Q. Do you have anything to add to it or take away from it? I'm trying to shorten this hearing by asking you this way.

A. Nothing further. I concur in everything both of them said.

Q. Do you think the petitioner, Louis Bostic, received a fair and impartial trial in Jasper County?

A. Yes, sir, I do.

(No cross examination).

MR. J. E. McTEER, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. MURDAUGH:

Q. Mr. McTeer, as of January, 1962 you were Sheriff of Beaufort County, S. C.?

A. I was.

Q. At the request of the State Law Enforcement Division did you go to Jasper County in connection with the shooting of Sheriff C. W. Floyd?

A. I did.

Q. What time did you arrive there, Sheriff?

A. It was a little after 3:00 o'clock when I heard it. It was around 5:00 o'clock.

[fol. 122] Q. I believe you met Chief Strom somewhere around Tillman?

A. Yes.

Q. When you met them did they have Louis Bostic with them?

A. No.

Q. Subsequent to that time, where did you run into them?

A. I heard that they had him located about a mile down the road from Tilghman. When I goth there, they were bringing him out of the house.

Q. You mean about a mile from town?

A. Yes, sir. Chief Strom took possession and put him in his car. I went there with my Chief Deputy Michael. Michael walked out to the car and got in the car with Chief Strom. Well, we had intercommunication through radio and they said they were going to start back toward Ridgeland with him. So at a filling station at the head of the road about one mile from there we stopped to change and Chief Strom asked me to ride with him as far as Ridgeland, so Michael drove my car and I got in the car with Chief Strom.

Q. When you got to Ridgeland, it's been testified that both Mr. Faulk and Mr. Strom got out and you had some conversation with the defendant?

A. That is correct.

Q. Did he make any statement to you?

A. He did.

Q. Were the statements free and voluntary?

A. They were.

Q. Did you or anyone else use any violence, duress or threats to secure statements?

A. None whatsoever.

[fol. 123] Q. Did you or anyone else offer him any hope of reward to make any statements?

A. None.

Q. Were they free and voluntary?

A. They were free and voluntary.

Q. Now you've already testified about the statements and they are already in the record?

A. That is correct.

Q. Did the defendant admit the shooting of Sheriff Floyd?

A. He did, sir.

Q. Then did you call Chief Strom and Mr. Faulk back to the car and have the defendant tell them in your presence the same thing he told you?

A. I did. They were only a few steps from the car.

Q. And were those statements free and voluntary?

A. They were free and voluntary.

Q. Did you or anyone else offer any hope of reward or use any duress or threats or promises to get any statements?

A. We did not.

Q. Now during the trial of the case were you present practically the whole day of the trial?

A. A greater part of the time.

Q. How many years were you Sheriff?

A. Thirty-seven.

Q. Are you familiar with trials in the low part of South Carolina?

A. I am.

Q. At any time during the trial of this case was the atmosphere so tense and disturbed and prejudiced that [fol. 124]the defendant could not get a fair and impartial trial?

A. There wasn't anything tense about it.

Q. Did you see anything arise during the trial of that case thatled you to believe the defendant did not reecive a fair and impartial trial?

A. None whatsoever.

MR. PERRY: If the Court please, I would like to state in open court that our examination of the record reveals that this man was vigorously defended at his trial and, I think, in keeping with the best standards of practice at our Bar. We have seen fit to address ourselves to some things in this petition for a writ of habeas corpus, none of which represents any effort on our part to criticize the kind of representation Louis Bostic had. I just wanted to make that statement for the record before Mr. Brown, Mr. Malphus, and Mr. Rivers are excused.

CROSS EXAMINATION

BY MR. WASHINGTON:

Q. Sheriff McTeer, at the time you first came to the place where Louis Bostic was being detained, how many people were with him at that time?

A. There were two men bringing him out of the yard when I drove up there. Then they brought him out to the highway where a good many cars had received the message and were lined up. Chief Strom was there and took him on down towards his car.

Q. And you followed behind this car in your own car?

A. I was in my own Sheriff's car.

Q. And how many persons also followed in their cars besides yourself?

[fol. 125] A. I could tell the marked cars. I would think there were mabye eight or ten that followed us from Bostic's house back out to the head of the road where there was a filling station.

Q. And then when the filling station was left, how many cars continued on with you all?

A. That's where I changed over with Chief Strom and Deputy Michael got in my car. My car, Chief Strom's car and one SLED agent, I think, came along. I think there were three, to the best of my knowledge.

Q. All the way into Ridgeland?

A. To Ridgeland.

Q. They were driving at close intervals?

A. I didn't pay attention how close. I was on my way home because going through Ridgeland is on the way to Beaufort.

Q. Were you in the company of Chief Strom when he advised the defendant of his right to remain silent and to not make any statement?

A. I certainly was.

Q. And you in addition to that also advised him?

A. Not at that time. Chief Strom was in complete charge. He asked me to come along with him as he and I have been lifelong friends and worked together in law enforcement and he went through the entire formula of advising him if his rights, that he didn't have to talk, etc.

MR. MURDAUGH: Now, if Your Honor please, we have available Lt. Stokes of SLED, Lt. Faulk of SLED, and Lt. Wyndham of SLED, and Mr. Rountree of SLED as to those confessions. If counsel wants us to put them up, all right, but I don't see any use of putting officers up to prolong this. We will put them up if they want us [fol. 126] to, but otherwise we are not going to do that, but by not calling them we are not waiving any rights.

THE COURT: All right, you offer those witnesses to testify?

MR. MURDAUGH: Yes, sir.

THE COURT: Mr. Perry, do you want to hear from any of those witnesses. I will require them to testify.

MR. PERRY: We do not, Your Honor.

MRS. EVELYN SPIVEY, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. BRANDON:

Q. You are Miss Evelyn Spivey?

A. That's correct.

Q. Miss Spivey, do you have an official pisition with Jasper County?

A. I am County Auditor.

Q. And as Auditor, do you have any connection with the Jury Commission?

A. I am one of the Jury Commissioners.

Q. Do you in Jasper follow the customary procedure of having three locks and three keys for the three Jury Commissioners?

A. We do.

Q. You have one and the other two each have one?

A. Yes, the others have one each.

Q. That box can't be opened except by the three of you?

A. Unless all three of us are there.

Q. How long have you been a Jury Commissioner?

A. About twelve years.

[fol. 127] Q. Tell us briefly your procedure in preparing the jury list and the box in Jasper.

A. Well, we take every male from the age of 21 to 65 from the registration books. Then we scratch off all the ones that are disqualified by law. That's for occupational reasons that exempts them from jury duty, and then we place in the box at least two-thirds or more of the other qualified electors.

Q. Miss Spivey, do you make any effort to determine the race of the jurors who are selected?

A. No, we do not. We take them jsut as they are listed on the books, all on one list without any designation whatsoever on our list.

Q. And after removing those that you consider disqualified at your discretion for various reasons, you then do what with the remainder?

A. We put at least two-thirds or more of them in there and it has been to the point that we have been putting

all of them in there to keep down the question as to who is in the box and who is not. We just put them in there. There is no reason why that man should not serve, except for a moral standpoint or anything, we put them in the box so there will be no question as to who is in the box or who is not.

Q. Do you feel that the Commission has made a bona fide effort to provide two-thirds of the eligible male electors in Jasper County?

A. We have, and if there is a legal box in South Carolina, I know Jasper County has one.

Q. Without regard to race, creed, or any other reason?

A. That is correct.

[fol. 128] Q. Do you know how many white or Negor electors are in your box?

A. We count them as a whole.

Q. Do you know that there are substantial numbers of Negroes electors in the box?

A. Yes, there are.

Q. Tell us whether or not you beliefe that there are two out of three qualified male electors in your boxes in Jasper County.

A. They are.

Q. Is there any way to tell a Negro juror from a white juror in the box?

A. There is not. No distinction whatsoever.

Q. How are they drawn out for prospective service?

A. Well, whenever it is time to draw a panel for a court, all the three Commissioners are there, each unlocks his lock, we stir up the whole box and we pull out. If it's just 40 for a term of court, 40 names are drawn and that's it.

Q. If they are all black, they're black and if they are all white, they are white?

A. If they are all black, they are all black and if they are all white they are white, and that's the way it goes. We are going to pull one Thursday and I don't know what's coming out of the box.

CROSS EXAMINATION

BY MR. WASHINGTON:

Q. Of course, Mrs. Spivey, as you are in the process of drawing a panel for a particular term, when you take the name out of the slip, from your personal knowledge or [fol. 129] from the personal of one of the other Commissioners, is it not true that then the race of the person drawn can be determined?

A. Well, no, you couldn't look at that name and tell. There is nothing on there to tell whether he's white, colored, or what, age or anything, unless we have a duplication of names and we know it. We will put whatever township he's in or district it is to designate that individual, like two John Jones. One may be Hardeeville and one Ridgeland, we'll put Ridgeland and Hardeeville so that we will be sure to get the right one that is drawn.

Q. What I was asking is whether or not there cannot be an identification of a juror from your personal knowledge or the knowledge of the other Commissioners at the time that his name is drawn.

A. Well, if you know him, you would know who he is and sometimes we have to refer to the registration book for the Sheriff to even go and summon him.

Q. And do you have any explanation at all as to the small number of Negroes who had actually been called for service other than chance?

A. Well, they just don't come out of the box. You can't control what comes out of the box. You stir them up and pull 40 and whatever comes up is it.

Q. You were serving, Miss Spivey, at the time when the judge quashed an indictment?

A. Yes.

Q. And you were advised of the effects of that decision?

A. I don't know what you are leading up to but now it was not that jury box that caused it. It was—because it was the sicth holdover of the preceding year, your [fol. 130] Grand Jury holdovers. It was the six holdover. The box itself was not illegal. It was the six holdovers on the Grand Jury that caused it, that was out of the box from the preceding year.

Q. Of course, I am referring to Judge Johnson's order quashing the panel on the ground that Negroes had been systematically excluded.

A. That was not the case as of that year. It was the six holdovers on the Grand Jury from the preceding year.

Q. As a result of what happened at that time has the Commission changed the policy?

A. We have done everything to try to follow the law to be sure it was correct. As I have already stated, if there is a legal box in South Carolina, Jasper's got one of them because we have followed it to the umpth degree to be sure that it was correct.

Q. Now, you have testified, Mrs. Spivey, that if all of the jurors that came out of your box were black, that would be your panel?

A. Yes.

Q. And if all persons came out of your box would be white, that would be your panel?

A. right.

Q. Have you ever drawn a jury panel of all black?

A. No.

Q. Have you ever drawn a jury panel of all whites?

A. I don't know. I imagine we have. Just whatever comes out of that box. You have no control over it. You stir them up and taken them as you come.

MR. MURDAUGH: If Your Honor please, we offer [fol. 131] in evidence affidavit of Judge Littlejohn as to the Paragraph D of the specifications in the Complaint about the fair and improper trial. As I understand the law, affidavits can be used in a habeas corpus proceeding.

THE COURT: Is there any objection to the affidavit of Judge Littlejohn?

MR. PERRY: None, Your Honor.

THE COURT: It will be received.

(Affidavit offered and received in evidence as Exhibit O.)

MR. BRANDON: If Your Honor please, the respondents present Solicitor Murdaugh as a witness.

RANDOLPH P. MURDAUGH, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. BRANDON:

Q. Mr. Murdaugh, you are Solicitor of the 14th Judicial District?

A. Right.

Q. For how long?

A. I'm going in my 24th year, sir.

Q. You've heard the reference made this morning to this hearing and you referred to it yourself from time to time. You remember that before Magistrate Harris?

A. Yes, sir.

Q. Do you recall when that took place, Solicitor?

A. Yes, sir, I was notified of this alleged shooting about 7:30 or 8:00 o'clock on the night of January 18, 1962 when the officer who called me, and frankly I don't remember who it was. I ask him had a warrant been taken [fol. 132] out for the defendant and had he been taken before a magistrate and I was advised that he had not because there was not a magistrate available, so I told the SLED officer—I think it might have been Chief Strom, I don't know who it was, to be absolutely certain—so I told him they had to bring the man down the next morning and have him taken—he was arrested without a warrant and as I interpret the law, when a person is arrested without a warrant, he should be taken as practical before the nearest magistrate and advised of his arrest. Well, the closest magistrate we could locate other than the brother of the deceased who was one of the arresting officers, incidentally. We felt he was disqualified to act as the committing magistrate, so we located Mr. George Harris who had not been available on the night before and had the warrant issued by Magistrate Harris and I read the warrant to Louis Bostic, told him if he wanted a lawyer and he didn't have the money or his family didn't have the money, told him I could arrange to have one appointed. I used the word early in the day that he was "arraigned." That was just a technical word on my part.

He wasn't arraigned as we lawyers use the word arraigned. As I say when a person is charged with committing a crime and a warrant has not been taken out for him, the law requires that he be immediately taken before a magistrate and advised of the situation, and that's what was done in this case.

Q. Then he was merely taken before the magistrate and the warrant was served upon him and he was advised as you have testified?

A. I read him the warrant and told him he was charged with killing Sheriff Floyd and he was entitled to a preliminary hearing if he wanted one. I told him he did [fol. 133] not have to give the seven days notice or the ten days notice for a preliminary, if he just notified me or the magistrate or Chief Strom, that we would get him one and get him a lawyer if he couldn't hire one.

Q. Was he required to enter a plea at this time?

A. No, sir, he hever opende his mouth and no questions were asked him other than whether he wanted a lawyer.

Q. When did you say this took place?

A. I would say between 9:00 and 10:00 o'clock the morning of January 19, 1962.

Q. Which was the morning after he had been arrested?

A. The morning after. As soon as we could locate Judge Harris. As soon as we could find him, we had that done, sir.

Q. As a matter of fact, that was the earliest possible time at which he could have been served with the warrant, the earliest reasonable possible time under the circumstances?

A. That is correct.

Q. Magistrate Floyd you understood to be one of the arresting officers?

A. Magistrate Floyd was the brother of the deceased, C. W. Floyd, the Sheriff. He was also one of the arresting officers and I felt like he should not issue the warrant or be the committing magistrate.

Q. You have testified as to what you ascribe to the term arraignment. You mean you used it—

A. When I used the word arraignment, I used it just as a word of my own vocabulary and not as the word

denoting any particular procedure. The only thing that was done, there was not arraignment where a person needed a lawyer. He was advised of his rights and that's all.

[fol. 134] Q. A solicitor of more than 20 years service, you know what the term arraignment means in its legal significance?

A. Yes, sir. This was not an arraignment like you arraign a person in a Court of General Sessions.

Q. You have arraigned many of them in the Court of General Sessions?

A. Hundreds of them, yes, sir.

Q. Do you wish to add anything that I might have overlooked, Solicitor?

A. No, sir.

CROSS EXAMINATION

BY MR. PERRY:

Q. Mr. Murdaugh, where did you begin that proceeding which was held on the morning of January 19th?

A. On Highway 601 in the middle of the highway, sir. Now that may be strange to you, but you practice law in the city. We country lawyers have hearings before the magistrate, you to the country stores and you have to stop during the hearing and let him make a sale, and I've had hearings out in the woods. This happened to be on Highway 601 because the magistrate came from Ridgeland and we were going toward Ridgeland and we happened to meet there.

Q. So you didn't really start in his office in Ridgeland?

A. No, sir. The magistrate is so small in these communities that it is just a part time job and you have to get hold of them wherever you can.

Q. And so, when the magistrate came out and met you out there at the scene of this offense, may I ask why did [fol. 135] you select this location?

A. We didn't select the location. I was in Hampton and Chief Strom came by and picked me up or one of his officers and we were going on to Ridgeland, and we just happened to see the magistrate there and saved us about

ten or fifteen miles on to Ridgeland, so we stopped there. It took about thirty seconds to a minute, was the whole proceeding took.

Q. You came upon the magistrate out there? Was he investigating the thing?

A. I couldn't tell you. I wouldn't think Mr. Harris would be investigating a murder case.

Q. Was he out of his car or inside his car?

A. No, he was outside of his car.

Q. Did he know you were going to meet him there?

A. I don't know whether he did or not, sir. I had not communicated with him.

Q. To your knowledge, had anyone else communicated with him?

A. No, sir. We were looking for a magistrate. Had it been Mr. Harris we found, I would have used him. I had to write the warrant after we got there.

Q. You wrote the warrant out there?

A. I wrote the warrant and I think Mr. Raymond or Mr. Rountree signed warrant so far as the officer was concerned and the magistrate signed the warrant at that time. It was the first magistrate we could find that disinterested after the shooting or after the apprehension of the defendant.

Q. Didn't Chief Strom acquaint the magistrate with the evidence he had against the accused.

A. If he did, I didn't know it and I was standing up [fol. 136] there the whole time. The magistrate didn't say a word to the defendant.

Q. There had not been any communication with the magistrate before that hearing.

A. I couldn't tell you whether anybody else communicated. You ask me if I had communicated with him and I had not, sir.

Q. I don't intend, sir, to place your testimony against Chief Strom's—

A. You have a rgiht to it and I don't object at all if you do.

Q. I would just like to ask if you remember Chief Strom's earlier testimony at which time he indicated that someone had reviewed the evidence with the magistrate before that time?

A. You asked me if I knew it and I told you I did not. I feel certain that the magistrate knew it because it was in the newspaper the next morning that the boy had admitted it and I presume that the magistrate knew it. Everybody else knew it down there, including the defendant's father, because I sent for him to have him there when we got there, and all that took place there before the magistrate, took place in Lawrence Bostic's presence. We had him there to talk to the boy.

Q. Did the magistrate ask any questions?

A. No, sir, he didn't say a word. I'm talking about during this proceeding. If you know Mr. Harris, you know he says a lot of words, but as far as this proceeding is concerned, it was something I was handling and representing the State. After he signed the warrant, I took the warrant and read it to Louis Bostic and I said, "You are being charged with murder and His Honor is committing you to Chief Strom's custody." I said, if I were you, [fol. 137]. I would either hire me a lawyer or get my family to hire me one or I can get the State to appoint you one." That's what I told him, and I proceeded to get him the three best ones that I knew were available.

Q. Now, sir, I would just like to discuss with you the words which you used this morning which you said was not intended to carry the legal connotation. This morning, if I recall your proceeding correctly, you inquired of Chief Strom on cross examination as to whether it wasn't a fact that the petitioner was fully arraigned on the morning of January 19? Am I correctly quoting you?

A. You are correctly quoting me, and as I used the word arraigned, I did not intend for it to be used as you use arraignment in the Circuit Court. It's just like a court charging the jury. It's not anywhere like His Honor here would charge a jury. I mean, you use some words in a magistrate's court that have their meaning with the magistrate whereas if you used the same word in the Circuit Court it would have its meaning there.

Q. But as I understand, of course, the question at that time was asked of Chief Strom and, of course, he replied in the affirmative, that is to say, that the petitioner was arraigned on the morning of January 19th. I realize now,

of course, that you are saying that this was not intended in the sense which the term arraignment normally has its legal meaning.

A. Well, in Circuit Court you read the indictment and then you inquire whether he's guilty or not guilty. We read the warrant to him, but no inquiry was made as to whether he was guilty or not guilty because it has no legal significance in that court, whether he was guilty or not [fol. 138] guilty. He had certain rights to have protected which we undertook to help him protect. You don't know me but you associate counsel can tell you I'll bend over backwards to see that a fellow gets a fair and impartial trial.

Q. I know you by reputation and I hope you understand that I'm not at this time attempting to cast aspersion against you as solicitor. May I inquire of you, sir, what other persons were present other than you, Chief Strom and Magistrate Harris?

A. Mr. Wyndham was in the vicinity. Whether he was there when it happened, I don't know. Mr. Rountree was there. Whether he was there actually present and heard what happened, I don't know. Mr. Raymond was there also. Now whether all of them were present at that particular time of the reading of the warrant to the defendant and my advising him of his rights in connection with his arrest, I just don't know whether they all heard it or not, but they were either present and heard it or they were in the immediate vicinity, sir.

THE COURT: Is there anything further from the State?

MR. MURDAUGH: Nothing further, sir.

THE COURT: Is there anything in reply?

MR. WASHINGTON: Nothing in reply.

THE COURT: All right, Gentlemen, what are your wishes about argument in this matter?

MR. PERRY: Does Your Honor care to have oral argument or would you think written argument would satisfy your desires?

THE COURT: I will accept either. If you wish to submit briefs and let that constitute your entire argument, I'll accept them.

MR. PERRY: Very good, sir, unless there is some [fol. 139] contrary disposition by the State, the petitioner would be happy to submit a written argument.

MR. BRANDON: That will be satisfactory with the State, Your Honor.

THE COURT: Do you want copies of this transcript before writing your briefs?

MR. PERRY: Without unduly delaying these proceeding, Your Honor, if we could, we would appreciate it. We would like very much to wait until we receive the transcript.

THE COURT: Is the Petitioner in position to pay for the transcript?

MR. WASHINGTON: Your Honor, Petitioner informs me that he would be able to pay for the transcript.

THE COURT: Does the Attorney General's office want a copy of the transcript?

MR. BRANDON: Yes, Your Honor.

THE COURT: Will 15 days after receipt of the transcript give you time to file your briefs?

MR. PERRY: Yes, Your Honor.

THE COURT: Mr. Cordell, I'll ask you then to prepare copies of the transcript for the Petitioner, for the Attorney General's office as soon as you can. I understand you have other matters also to attend to, but I'll ask you, if you can, to give this first priority in what you have to do and notify the Court of the day that the transcript is delivered. The Petitioner will then have 15 days in which to file a brief with the Court with copies to the Solicitor's office and the Attorney General. The Attorney General's office will then have 15 days in which to file a reply and following that, the Petitioner will have seven [fol. 140] days in which to file any answer that they wish to file to the brief of the Attorney General's office.

MR. PERRY: Thank you, sir.

THE COURT: And the written brief will constitute both brief and argument and by agreement there will be no further oral argument in the matter.

(Whereupon, the hearing was concluded.)

IN THE FIFTH JUDICIAL CIRCUIT COURT

Opinion and Order Denying Petition for Habeas Corpus—July 3, 1964

This matter is before the Court upon a petition for the issuance of a Writ of Habeas Corpus alleging that the Petitioner, a Negro, is illegally and unlawfully confined in the South Carolina State Penitentiary. A full hearing was held by me on November 18, 1963, at which all parties appeared or were represented by counsel. The petitioner was present in compliance with the order of this Court dated November 7, 1963.

Petitioner was heretofore convicted of the murder of Sheriff C. W. Floyd of Jasper County, South Carolina, and sentenced to death. This conviction was affirmed by the Supreme Court of South Carolina on July 10, 1963. *State* v. *Bostic*, 243 S. C. 14, 133 S.E.(2d) 841.

Petitioner bases his claim for relief upon five grounds, alleging that a decision in his favor on any one of them would authorize relief. These five grounds are as follows: the first four having been presented in the petition, and the fifth one being asserted during the course of the hearing:

I. That the admission into evidence of his oral and written confessions was violative of due process under the State and Federal Constitutions.

[fol. 141] II. That the grand jury which indicted him was illegally constituted in that members of the negro race were systematically excluded therefrom, thereby violating due process under the State and Federal Constitutions.

III. That the petit jury which convicted him was illegally constituted in that members of the Negro race were systematically excluded therefrom, thereby violating due process under the State and Federal Constitutions.

IV. That the trial was conducted in such an atmosphere of tension that petitioner could not receive a fari trail, thereby violating due process under the State and Federal Constitutions.

V. That petitioner was denied due process under the State and Federal Constitutions by being arraigned before

a magistrate and subjected to other pre-trial proceedings without the assistance of counsel.

As to petitioner's contention that his confessions should not have been used against him, nothing was presented at the hearing before me which in the slighest indicates that they were not voluntary. The testimony of officers Strom, Raymond and McTeer that they were free and voluntary was uncontradicted.

Grounds II and III, concerning the alleged systematic exclusion of negroes from the grand and petit juries, respectively, will be considered together since the law is identical as to each. The Supreme Court of South Carolina in the recent decision of *Moorer* v. *State*, 135 S.E. (2d) 713, has considered the matter of alleged systematic exclusion of negroes from juries. Certain principles enunciated therein are applicable here. A jury need not be composed of a certain proportion of a particular race in order to comply with due process. In fact proportional racial representation is forbidden, and disproportion in [fol. 142] the final selection does not in itself show discrimination. There should be neither inclusion nor exclusion on account of race. Discrimination must be proved; it cannot be presumed. Discrimination in prior years will not nullify a present conviction if the selection of the jury for the current term is on a proper basis.

The testimony of R. L. Sensenbach, Clerk of Court for Jasper County and, by law, a Jury Commissioner, who testified in petitioner's behalf, does not sustain petitioner's contention that there was systematic exclusion of Negroes from the grand and petit juries. His testimony was that two out of three eligible male electors, without regard to race, are placed in the jury box each year for jury duty, and that no person is selected or omitted on account of race. His testimony was supported substantially by that of Miss Evelyn Spivey, Auditor for Jasper County, and a Jury Commissioner. The Clerk of the Jasper County Registration Board testified that as of January 1, 1962 there were approximately 974 white male electors and 256 negor male electors. The testimony of Mr. Sensenbach was that there had been negroes on the grand and petit juries for a number of years, and that for the year 1962 there was one negro on the grand jury. At the February,

1962, term of the Court of General Sessions, during which petitioner was tried, there were two negroes on the panel of petit jurors. It is my opinion that petitioner has not proved any discrimination in the selection of juries, either systematic or otherwise.

Petitioner's contention that his trial was conducted in such an atmosphere of tension and prejudice is not sustained by any proof. The only testimony adduced was that his trial was one of the calmest ever held in Jasper County.

Petitioner's final contention that he was denied due [fol. 143] process by being taken before a magistrate without having counsel is based upon a fanciful view of what really happened. Petitioner argues that he was required to re-enact the crime on the morning after his arrest. Not the slightest evidence was produced to substantiate this charge. Testimony before the Court from Chief Strom of the South Carolina Law Enforcement Division and Solicitor Murdaugh showed that a warrant charging murder was procured for petitioner; that the warrant was read to petitioner, and he was advised that he had a right to counsel. Petitioner made no statement and entered no plea, and none was sought from him. Petitioner's counsel specifically stated that they were not raising any question concerning the failure of appointed trial counsel to ask for a preliminary hearing (Tr. p. 120). A preliminary hearing is not a "critical stage" of criminal proceedings in South Carolina. *State* v. *White*, 243 S.C. 238, 133 S.E. (2d) 320; *Moorer* v. *State*, supra. In any event, I am convinced that nothing took place to prejudice petitioner. In truth, he was benefitted by having the charge explained and being advised that he had a right to counsel.

Petitioner asserts in his petition that none of the matters alleged therein were asserted at his trial. They in fact could and should have been so asserted.

The Court hereby finds against and overrules all contentions of petitioner and denies his petition for a Writ of Habeas Corpus.

/s/ JOHN GRIMBALL
Resident Judge, Fifth Judicial Circuit.

Columbia, S.C.
July 3rd, 1964

IN THE FIFTH JUDICIAL CIRCUIT COURT

EXCEPTIONS

1. The Court erred in refusing to hold that the confessions admitted in evidence against appellant at his trial was obtained by coercion in violation of the due process [fol. 144] clause of the Fourteenth Amendment to the United States Constitution and Article 1, Sections 5 and 18.

2. The Court erred in refusing to hold that due process of law under the Fourteenth Amendment to the United States Constitution was denied appellant in that, at his trial, certain confessions and inculpatory statements were admitted as evidence and considered against appellant, said confessions and inculpatory statements having been made by appellant without the advice of a lawyer and without appellant having been advised of the right to remain silent and of the right to consult with a lawyer.

3. The Court erred in refusing to hold that due process of law under the Fourteenth Amendment to the United States Constitution was denied appellant in that he was subjected to a preliminary hearing or other pre-trial proceedings without the assistance of a lawyer.

4. The Court erred in refusing to hold that due process of law under the Fourteenth Amendment to the United States Constitution was denied appellant in that evidence was presented and admitted into evidence at his trial concerning a re-enactment by appellant of the alleged homicide, said re-enactment having been made without the advice of a lawyer and without appellant having been advised of the right to remain silent, to refuse to make any statement or admission by re-enactment of said offense or otherwise and of the right to consult with a lawyer.

5. The Court erred in refusing to hold that the indictment returned against appellant was returned by a grand jury from which members of the Negro race were systematically excluded in violation of appellant's right to due process of law under the Fourteenth Amendment to the United States Constitution and under Article 1, Sections 5 and 18, Constitution of the State of South Carolina.

[fol. 145] 6. The Court erred in refusing to hold that the petit jury which tried and convicted appellant was illegally constituted in that members of the Negro race were systematically excluded therefrom in violation of appellant's right to due process of law under the Fourteenth Amendment to the United States Constitution and in violation of appellant's rights under Article 1, Sections 5 and 18, Constitution of the State of South Carolina.

* * * * *

[fol. 146]

IN THE SUPREME COURT OF SOUTH CAROLINA

LOUIS BOSTICK, APPELLANT

v.

STATE OF SOUTH CAROLINA and ELLIS C. MACDOUGALL, Director, South Carolina Board of Corrections, RESPONDENTS

Appeal From Richland County
John Grimball, Judge

OPINION—Filed November 30, 1965

AFFIRMED

Charles E. Washington, of Beaufort; and Jenkins & Perry, of Columbia, for appellant.

Attorney General Daniel R. McLeod and Assistant Attorney General Everett N. Brandon, both of Columbia; and Solicitor Randolph Murdaugh, of Hampton, for respondents.

TAYLOR, C. J.: This is an appeal from the Order of the Honorable John Grimball, dated July 3, 1964, denying petitioner's application for writ of habeas corpus.

Petitioner was convicted of the murder of the Sheriff of Jasper County and sentenced to death. He appealed

and the conviction and sentence were affirmed. State v. Bostick, 243 S. C. 14, 131 S. E. (2d) 841. Petitioner thereafter filed a petition for writ of habeas corpus. After a hearing on November 18, 1964, this petition was denied, and the petitioner now appeals on several exceptions which raise the issues of (1) whether Negroes were systematically excluded from the Grand and Petit Juries and (2) whether petitioner was denied the benefit of counsel at certain stages of the proceedings from his apprehension to the time of appointment of counsel, thereby rendering his confession inadmissible.

In the recent case of State v. Moorer, 244 S. C. 102, 135 S. E. (2d) 713, this Court had under consideration the question of whether Negroes had been systematically excluded from the Grand and Petit Juries because of race, and this Court stated therein:

> "In State v. Waitus, 224 S. C. 12, 77 S. E. (2d) 256, and State v. Middleton, 207 S. C. 478, 36 S. E. (2d) 742, this Court reviewed the constitutional and statutory law of this State relating to the qualifications of jurors and the method of selecting them. Each juror is required to be a qualified male elector between the ages of 21 and 65 years and of good moral character. The Grand Jury shall consist of 18 members and the Petit Jury shall consist of 12 men all of whom must agree to a verdict in order to render the same. Article 5, Section 22, Constitution of South Carolina. The term 'qualified elector' means 'registered elector'. State v. Rector, 158 S. C. 212, 155 S. E. 385; State v. Grant, 199 S. C. 412, 19 S. E. (2d) 638; State v. Waitus, 224 S. C. 12, 77 S. E. (2d) 256.
>
> "Every registered male elector is a potential and duly qualified juror, and his name may be taken from the Registrations Books by the Jury Commission. State v. Waitus, 224 S. C. 12, 77 S. E. (2d) 256. The Jury Commissioners are Auditor, Treasurer, and Clerk of Court, Section 38-51, Code of Laws of South Carolina, 1962, and by statute they are required to prepare from the official enrollment books of qualified electors a list containing not less than two-thirds of

the electors they deem qualified for jury duty. Section 38-52, Code of Laws of South Carolina, 1962. * * * The Jury Commissioners are required by Section 38-55 to place the name of each person on said list on a separate sheet of paper, each paper to resemble the others as much as possible, and, after folding, to insert same in a container or capsule. These containers or capsules are then placed in what is known as a 'jury box'.

[fol. 147] "In this State it is only required that 12 new men be drawn once a year to serve as Grand Jurors and they, together with 6 hold-over members drawn by lot from the previous Grand Jury, constitute the Grand Jury for that year. Sections 38-401 to 38-405, Code of Laws of South Carolina, 1962. * * *

"As stated in State v. Waitus, supra, 224 S. C. 12, 77 S. E. (2d) 256: 'There is certainly no denial of the equal protection of the laws in any of the foregoing constitutional or statutory provisions. Franklin v. South Carolina, 218 U. S. 161, 30 S. Ct. 640, 54 L. Ed. 980; State v. Middleton, supra, 207 S. C. 478, 36 S. E. (2d) 742.'

"There are many U. S. Supreme Court decisions holding that discrimination on the basis of race in the selection of persons for service on Grand Jury or Petit Jury panels is in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. Norris v. State of Alabama, 294 U. S. 587, 55 S. Ct. 579, 79 L. Ed. 1074; Akins v. State of Texas, 325 U. S. 398, 65 S. Ct. 1276, 89 L. Ed. 1692; Cassell v. State of Texas, 339 U. S. 282, 70 S. Ct. 629, 94 L. Ed. 839. This does not mean that a jury must be composed of a certain proportion of a particular race in order to assure equal protection of the law. Proportional racial limitations is forbidden and inequality or disproportion in the jury finally selected does not in itself show discrimination. Akins v. State of Texas, supra, 325 U. S. 398, 65 S. Ct. 1276, 89 L. Ed. 1692. An accused is entitled to have the charges against him

considered by a jury in the selection of which there has been neither inclusion nor exclusion because of race or color. Cassell v. State of Texas, supra, 339 U. S. 282, 70 S. Ct. 629, 94 L. Ed. 839.

"Discrimination in the selection of a jury must be proved; it cannot be presumed, Torrance v. State of Florida, 188 U. S. 519, 23 S. Ct. 402, 47 L. Ed. 572; and a defendant objecting to a Grand or Petit Jury because of alleged discrimination against his race has the burden of establishing such discrimination. Akins v. State of Texas, supra, 325 U. S. 398, 65 S. Ct. 1276, 89 L. Ed. 1692. However, a defendant may establish a prima facie case of discrimination in which case the burden shifts to the State to refute the discrimination and evidence that Negroes have never served on a jury in the county has been held to make a prima facie case. Norris v. State of Alabama, supra, 294 U. S. 587, 55 S. Ct. 579, 79 L. Ed. 1074; Hill v. State of Texas, 316 Y. S. 400, 62 S. Ct. 1159, 86 L. Ed. 1559; Patton v. State of Mississippi, 332 U. S. 463, 68 S. Ct. 184, 92 L. Ed. 76.

"Whether there has been systematic racial discrimination by administrative officials in the selection of jurors is a question to be determined from the facts in each particular case, Patton v. State of Mississippi, 332 U. S. 463, 68 S. Ct. 184, 92 L. Ed. 76. However, discriminatory selection in prior years does not nullify a present conviction if the selection of the jury for the current term is on a proper basis. 'Former errors cannot invalidate future trials.' Brown v. Allen, 344 U. S. 443, 73 S. Ct. 397, 97 L. Ed. 469."

The Clerk of the Jasper County Registration Board testified that the jury box at the time of the Term during which petitioner was tried was made up from the Registration Books as of December 4, 1961. The total number of qualified male electors, between the ages of 21 and 65, was 1230, 974 white and 256 Negro.

The County Auditor, a member of the Jury Commission, testified as to the procedure followed in preparing the jury list. She testified that from all males appearing

in the Registration Books from the ages of 21 to 65 those disqualified from jury duty due to statutory disqualification, death, etc., are disregarded and two-thirds or more of the remaining names are placed on the jury list without any designation of race, and the names are then placed in the box which has three separate locks, each member having a key for only one of the locks.

The Clerk of Court, a member of the Commission for 14 years, testified that during his 14 years at least two-thirds, and sometimes more, of the qualified male electors are placed in the jury box. The Clerk further testified on racial inclusion and exclusion as follows:

> "Q. Has the Commission to your knowledge ever made a conscious effort to place at least one Negro Juror on the Grand Jury?
>
> [fol. 148] "A. No, because we draw them out and we let them hit as they fall. We don't keep rejecting whites until we get a Negro. We don't keep rejecting Negroes until we get a white.
>
> * * * *
>
> "Q. And you say just as you never reject any white person from service just because there is a Negro not on there yet the same thing is true on the other side of the corner?
>
> "A. I'll swear to that.
>
> "Q. And you never have no purpose to try to keep Negroes from the jury?
>
> "A. If we pull them out of the box and it happens to hit a colored one, we'll hit it; if it's white, it's white. If they are all one way or all the other."

The names of prospective jurors are not accompanied on the list with designation of race. Racial designation appears on the Registration Books but there is no designation whatever upon the jury list or the capsules in the jury box.

The Senator from Jasper County testified that since 1948 or 1949 when Judge Waring (U. S. District Judge for the Western District of South Carolina) handed down his decision there has been no question as to the exclusion of Negroes from registration. The Clerk of Court testi-

fied to the same effect. There was no testimony offered to the contrary.

The only testimony indicating otherwise in any manner was that of the witness Bryant who said he had been in attendance at General Sessions Court at least once in each of the preceding 7 or 8 years and recalled no more than one Negro on the Grand Jury which, he thought, was in 1960, and recalled none having served on the Petit Jury.

The Court records show, however, that one Negro was on the Grand Jury which returned a true bill aginst petitioner in instant case and two Negroes on the panel of Petit Jurors at the Term petitioner was tried.

This question is, therefore, resolved against the contention of petitioner.

Petitioner contends that his Constitutional rights as guaranteed by the Fourteenth Amendment to the United States Constitution were violated by admission into evidence his confessions, thereby depriving him of due process of law.

Petitioner was taken into custody by law enforcement personnel late in the afternoon of the same day that the Sheriff was killed. He was immediately turned over to the chief investigator, J. P. Strom, Chief of The South Carolina Law Enforcement Division. He was placed in the back seat of Chief Strom's car and two other officers got in the front seat, and they proceeded to Ridgeland, the County seat.

By this time there were some twelve to fifteen law enforcement officers in the vicinity and a number of citizens, both white and Negro had gathered as is normal under the circumstances. Upon arrival at Ridgeland, Chief Strom and one officer got out of the car to tell a deputy sheriff of the sheriff's death. (The deputy had been away on another matter and had not heard of the death.) While the two were outside the car, another officer, the sheriff of an adjoining county, called to them that the petitioner wished to make a statement. At that time, which was approximately 30 minutes after his apprehension, the petitioner made his first verbal admission of shooting the sheriff. Petitioner was then carried to Columbia where he remained during the night, either at

the penitentiary or the South Carolina Law Enforcement Headquarters (the record is not clear), where he made further statements which were reduced to writing and subsequently introduced into the record at the trial.

The next morning petitioner was brought back to the County seat, arriving there at approximately 10:30 or 11:00 A. M., then to the scene of the slaying where in the presence of Chief Strom, three other law enforcement officers, the Circuit Solicitor and petitioner's father, he was presented to a Magistrate and a warrant issued. The warrant was read to petitioner; he made no statement and entered no plea.

Petitioner now urges that the absence of counsel during the times mentioned above renders the confessions void [fol. 149] and was a denial of due process of law under the principles of Haynes v. State of Washington, 83 S. Ct. 1336, 373 U. S. 503, 8 L. Ed. (2d) 399; Powell v. State of Alabama, 287 U. S. 45, 33 S. Ct. 55, 77 L. Ed. 185; Hamilton v. Alabama, 368 U. S. 52, 82 S. Ct. 157, 7 L. Ed. (2d) 114; White v. State of Maryland, 373 U. S. 59, 83 S. Ct. 1050, 10 L. Ed. (2d) 193; Escobedo v. Illinois, 378 U. S. 478, 84 S. Ct. 1758, 12 L. Ed. (2d) 977.

In instant case it is uncontradicted that petitioner knew or believed the State would furnish him counsel and that he was repeatedly advised of his right to counsel and of his right to remain silent. Chief Strom testified that he advised petitioner after his apprehension and prior to any statement made by petitioner that he did not have to make a statement, that any statement he did make could be used against him and that he had the right to counsel. He further offered to take him to see his father and mother if he wanted to see them. Chief Strom also testified that he advised petitioner that before he made any statement he would allow him to phone a lawyer or his parents or that he would call for him or carry him by his house. Petitioner stated that he did not wish to see his parents. Chief Strom further testified that he advised petitioner as to the reason for his apprehension prior to any statements by petitioner. He testified that he again offered to call a lawyer at Columbia prior to the taking of the written confession.

Solicitor Murdaugh testified that at his first meeting with the petiitoner, which was the morning after his arrest when the warrant was issued, he advised petitioner of the charge against him and advised him of his right to counsel and to a preliminary hearing, that petitioner was repeatedly advised of his right to counsel and of his right to remain silent, that assistance was offered petitioner in securing an attorney and that he was advised to do so. Counsel was appointed to represent petitioner in the form of three members of the local Bar approximately 10 days before trial and there is no contention that these counsel were appointed too late to adequately prepare for the trial nor is there any contention that their conduct of the defense was at all inadequate.

A review of the authorities cited by petitioner in his brief reveals that they do not support petitioner's contention that he was denied due process of law.

Powell v. Alabama, 287 U. S. 45, 77 L. Ed. 185, 53 S. Ct. 55, does not consider the question of the admissibility of confessions obtained in the absence of counsel. The extent of the holding in that case is than an assignment of counsel "at such time or under such circumstances as to preclude the giving of effective aid in the preparation and trial of the case" does not afford the right to counsel required by due process of law.

In Hamilton v. Alabama, 368 U. S. 52, 82 S. Ct. 157, 7 L. Ed. 114, the accused had been denied counsel at his arraignment. His conviction was reversed. However, it appeared that in Alabama arraignment is a critical stage in criminal proceedings. It is there that the defense of insanity must be pleaded; that pleas in abatement must be made; that motions to quash based on defects in the drawing of the Grand Jury must be made. In White v. Maryland, 373 U. S. 59, 83 S. Ct. 1050, 10 L. Ed. (2d) 193, it was held that the critical stage theory of Hamilton governed where accused was not furnished counsel at a preliminary hearing where he pleaded guilty even though no plea was necessary. The Court held that the plea of guilty made the proceeding a "critical" stage.

The record in this case reveals that at no time prior to his arraignment after indictment, when he was repre-

sented by counsel, was petitioner required to enter any plea or make any statement. At no time was a preliminary hearing held, since none was requested by petitioner or his attorneys. Indeed, petitioner's attorneys testified that a preliminary hearing was not desired.

In Escobedo v. Illinois, 378 U. S. 478, 12 L. Ed. (2d) 977, 84 S. Ct. 1758, the Court said:

> "We hold, therefore, that where, as here, the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogations that lends itself to eliciting incriminating statements, the suspect has requested and been denied an opportunity to consult with his lawyer, and the police have not effectively warned him of his absolute constitutional right to remain silent, the accused has been denied 'the Assistance of Counsel' in violation of the Sixth [fol. 150] Amendment to the Constitution as 'made obligatory upon the States by the Fourteenth Amendment', Gideon v. Wainwright, 372 U. S., at 342, 9 L. Ed. (2d) at 804, 93 A. L. R. (2d) 733, and that no statement elicited by the police during the interrogation may be used against him at a criminal trial."

In instant case there was no denial after request to see counsel; there was, rather, the offer to secure counsel and there was warning of the right to remain silent.

In Haynes v. State of Washington, 373 U. S. 503, 83 S. Ct. 1336, 8 L. Ed. (2d) 399, the accused was held incommunicado by the police for sixteen hours during which time he requested several times that he be permitted to call an attorney and to call his wife. His requests were denied and he was told that he would not be allowed to call unless and until he "cooperated" with police and gave a confession.

There is no evidence of threats or promises in the securing of Bostick's confession. The only testimony on the subject is to the contrary.

There is no merit in petitioner's contention that he was arraigned before the magistrate. In South Carolina the

magistrate had no power to arraign petitioner. He had the duty and authority to issue the warrant as was done, and this in nowise can be termed an arraignment. In fact, petitioner could not plead before a magistrate in South Carolina. See State v. White, 243 S. C. 238, 133 S. E. (2d) 320.

Petitioner's trial counsel testified that they were familiar with the pretrial proceeding and did not raise any Constitutional questions at the trial, that they received no information that the confessions were not freely and voluntarily given and that they could find no evidence that they were not properly taken and for that reason offered no testimony at the trial on the question of voluntariness.

We are of opinion that all exceptions should be overruled and the Order appealed from affirmed, and IT IS SO ORDERED. AFFIRMED.

MOSS, LEWIS, BUSSEY and BRAISFORD, JJ., concur.

[fol. 151]

IN THE SUPREME COURT OF SOUTH CAROLINA

[Title Omitted]

PETITION FOR REHEARING

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF SOUTH CAROLINA:

Petitioner Louis Bostic respectfully requests a rehearing in the above case. Petitioner respectfully submits that this Court, in affirming the judgment of the Court below may have overlooked or misapprehended certain facts and rules of law urged in his appeal.

The trial record supports petitioner's contention that he was subjected to a pretrial proceeding at the scene of the crime and that, in the presence of the magistrate, solicitor and investigating officers, petitioner reenacted the crime, pointing out the location of certain items and thereby admitting commission of the crime. While this proceeding was not, under ordinary circumstances, a crucial stage of the proceedings in South Carolina, *State* v. *White*, 243 S. C. 238, 133 S.E.(2d) 320, it was made [fol. 152] crucial in this case when one or more of the investigating officers testified at the trial concerning the reenactment. The fact that petitioner did not at that time have an attorney and none was then appointed for him, rendered the officers testimony concerning the reenactment inadmissible under *White* v. *Maryland*, 373 U.S. 59, 83 S.Ct. 1050, 10 L.Ed.(2d) 193; *Hamilton* v. *Alabama*, 368 U.S. 52, 82 S.Ct. 157, 7 L.Ed.(2d) 114 and *Escobedo* v. *Illinois*, 378 U.S. 478, 12 L.Ed.(2d) 977, 84 S.Ct. 1758.

In the opinion herein, the Court, alluding to the above stated proceeding, stated:

> "The next morning petitioner was brought back to the County seat, arriving there at approximately 10:30 or 11:30 a.m. then to the scene of the slaying where in the presence of Chief Strom, three other

law enforcement officers, the Circuit Solicitor and petitioner's father, he was presented to a Magistrate and a warrant issued. The warrant was read to petitioner; he made no statement and entered no plea".

The above quoted statement does not include reference to the reenactment and to the further fact that at the petitioner's trial, an officer testified concerning the reenactment.

It is respectfully submitted that this fact may have been overlooked or misapprehended. It's importance in the context of these proceedings cannot be over emphasized in light of the fact that petitioner is under a death sentence.

[fol. 153] CONCLUSION

WHEREFORE, petitioner prays that he be granted a rehearing.

Respectfully submitted,

/s/ Charles E. Washington, Jr.
CHARLES E. WASHINGTON, JR.

/s/ Matthew J. Perry
MATTHEW J. PERRY
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Attorneys for Petitioner.

[fol. 154]

IN THE SUPREME COURT OF SOUTH CAROLINA

[Title Omitted]

CERTIFICATE

I, Harold R. Boulware, hereby certify that I am a practicing attorney of this Court and am in no way connected with the within case. I further certify that I am familiar with the record of this case and have read the opinion of this Court which was filed November 30, 1965, and in my opinion there is merit in the Petition for Rehearing.

/s/ Harold R. Boulware
HAROLD R. BOULWARE

Columbia, South Carolina

December 9th, 1965.

[fol. 155]

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Case No. 18426

* * * *

PETITION DENIED—Dec. 14, 1965

/s/ C. A. Taylor, C. J.

/s/ [Illegible]

/s/ [Illegible]

/s/ Thos. P. Bussey, A. J.

/s/ J. M. Brailsford, A. J.

Supreme Court of South Carolina
Clerk's Office, Columbia, S. C.
Filed Dec. 14, 1965
Frances H. Smith

[fol. 156]

SUPREME COURT OF THE UNITED STATES

No. 62 Misc., October Term, 1966

LOUIS BOSTIC, PETITIONER

v.

SOUTH CAROLINA, ET AL.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—October 10, 1966

On petition for writ of Certiorari to the Supreme Court of the State of South Carolina.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted limited to the jury question. The case is transferred to the appellate docket as No. 647.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 647

LOUIS BOSTICK,

Petitioner,

—v.—

STATE OF SOUTH CAROLINA, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF SOUTH CAROLINA

BRIEF FOR PETITIONER

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 647

LOUIS BOSTICK,

Petitioner,

—v.—

STATE OF SOUTH CAROLINA, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

BRIEF FOR PETITIONER

Opinion Below

The opinion of the Supreme Court of South Carolina (R. 117-126) is reported at 245 S. C. ——, 145 S. E. (2d) 439.

Jurisdiction

The judgment of the Supreme Court of South Carolina was entered November 30, 1965. Rehearing was denied December 14, 1965. Petition for Writ of Certiorari was

filed in this Court March 14, 1966. The Petition for Writ of Certiorari and the Petition for Leave to Proceed in Forma Pauperis were granted October 10, 1966. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257(3), petitioner having asserted below and claiming here, rights, privileges and immunities secured by the Fourteenth Amendment to the Constitution of the United States.

Constitutional Provision Involved

This case involves Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Question Presented

Whether due process of law guaranteed by the Fourteenth Amendment was denied petitioner by selection of the grand jury which indicted him and of the petit jury which tried him on the basis of race.

Statement

Petitioner, Louis Bostick, was arrested January 18, 1962 and charged with the murder of Jasper County South Carolina Sheriff C. W. Floyd who was shot to death earlier the same day (R. 11). Petitioner was thereafter tried, convicted of murder and senteneed to death (R. 117). On appeal to the Supreme Court of South Carolina, the conviction and sentence were affirmed. *State* v. *Bostick*, 243 S. C. 14, 131 S. E. (2d) 841. Thereafter petitioner filed a petition for writ of habeas corpus alleging that his detention and sentence violate the United States Constitution

upon the several grounds therein alleged and including the assertion that Negroes were systematically excluded from the grand and petit juries which indicted, tried and convicted him (R. 2, 3, 4, 5). The petition was denied. On appeal, the judgment was affirmed by the Supreme Court of South Carolina. *Bostick* v. *State of South Carolina, et al.*, 245 S. C. ——, 145 S. E. (2d) 439.

The evidence adduced upon the ground that Negfoes were excluded from the grand and petit juries is that the population of Jasper County South Carolina is about evenly divided racially (R. 64);[1] that at the beginning of 1962 there were 947 qualified white male electors and 246 qualified Negro male electors in Jasper County (R. 81, 82); that only one Negro has served on the grand jury of Jasper County (R. 28, 29, 66, 67, 68, 69, 70, 71); that there are usually one or two Negroes on the panel of petit jurors (R. 69); that the Clerk of Court who is one of the statutory jury commissioners can determine the race of a prospective juror as soon as he observes his name (R. 66); that in 1954 an indictment was quashed in another criminal case in Jasper County, the trial judge having found racial discrimination in the manner of selection of the grand and petit jurors (R. 70); and that the Jury Commission has not changed its method of selecting jurors (R. 70, 75). Additionally, it was shown that a "good many" Negroes, though registered "can't read and write barely" and are "disqualified to begin with" (R. 75, 76). As was stated by the Clerk of Court (R. 76):

[1] The U. S. Census Report, 1960, indicates the adult white population of Jasper County as 2,689 and the adult Negro population as 3,333.

"Well, with the representation of the county and the ones that are qualified to serve, I couldn't tell you without I studied them over and saw the qualifications of the juror. We have some that can't read and write barely, and yet they have been registered. Would you want him to judge you or anybody else? I'm going to strike a white man like that if I know it, and I have to boil them down to what I figure is—I say not I, we figure are qualified."

ARGUMENT

Due Process of Law and Equal Protection of the Law Guaranteed by the Fourteenth Amendment Were Denied Petitioner in That the Grand Jury Which Indicted Him and the Petit Jury Which Tried and Convicted Him Were So Constituted as to Systematically Exclude Negroes.

In *Eubanks* v. *Louisiana*, 356 U. S. 584, 2 L. Ed. (2d) 991, 78 S. Ct. 970, Mr. Justice Black stated the principle upon which petitioner relies as follows:

"In an unbroken line of cases stretching back almost 80 years this Court has held that a criminal defendant is denied the equal protection of the laws guaranteed by the Fourteenth Amendment if he is indicted by a grand jury or tried by a petit jury from which members of his race have been excluded because of their race."[2]

---

[2] *Strauder* v. *State of West Virginia*, 100 U. S. 303, 25 L. Ed. 664; *Neal* v. *State of Delaware*, 103 U. S. 370, 26 L. Ed. 567; *Gibson* v. *State of Mississippi*, 162 U. S. 565, 16 S. Ct. 904, 40 L. Ed. 1075; *Carter* v. *State of Texas*, 177 U. S. 442, 20 S. Ct. 687, 44 L. Ed. 839; *Rogers* v. *State of Alabama*, 192 U. S. 226, 24 S. Ct. 257, 48 L. Ed. 417; *Martin* v. *State of Texas*, 200 U. S. 316, 26 S. Ct. 338, 50 L. Ed. 497; *Norris* v. *State of Alabama*, 294 U. S. 587, 55

The Court below evidenced understanding of this principle (R. 119, 120) but declined to apply it to the facts of this case.

Petitioner submits that the proof here demonstrates systematic exclusion of Negroes from the grand jury which indicted him and from the petit jury which tried and convicted him. That proof is as follows:

Clerk of Court R. L. Sensenback testified that he had been Clerk of Court in Jasper County 14 years (R. 64). He could not recall a Negro serving on the grand jury of Jasper County except during 1962 when one Negro served upon the grand jury which indicted petitioner (R. 66, 67, 68, 69, 70, 71). He testified also that the names of Negroes are in the jury box in proportion to the male white electors registered and qualified (R. 71); that there are usually one or two Negroes on the petit jury panel (R. 69); that he and the other Jury Commissioners made no changes in the methods of selecting jurors after a South Carolina Judge found discrimination in the manner of jury selec-

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S. Ct. 579, 79 L. Ed. 1074; *Hale* v. *Commonwealth of Kentucky*, 303 U. S. 613, 58 S. Ct. 753, 82 L. Ed. 1050; *Pierre* v. *State of Louisiana*, 306 U. S. 354, 59 S. Ct. 536, 83 L. Ed. 757; *Smith* v. *State of Texas*, 311 U. S. 128, 61 S. Ct. 164, 85 L. Ed. 84; *Hill* v. *State of Texas*, 316 U. S. 400, 62 S. Ct. 1159, 86 L. Ed. 1559; *Akins* v. *State of Texas*, 325 U. S. 398, 65 S. Ct. 1276, 89 L. Ed. 1692; *Patton* v. *State of Mississippi*, 332 U. S. 463, 68 S. Ct. 184, 92 L. Ed. 76; *Cassell* v. *State of Texas*, 339 U. S. 282, 70 S. Ct. 629, 94 L. Ed. 839; *Hernandez* v. *State of Texas*, 347 U. S. 475, 74 S. Ct. 667, 98 L. Ed. 866; *Reece* v. *State of Georgia*, 350 U. S. 85, 76 S. Ct. 167, 100 L. Ed. 77; *Strauder* v. *State of West Virginia*, 100 U. S. 303, 25 L. Ed. 664.

See also *Avery* v. *Georgia*, 345 U. S. 559, —— L. Ed. ——, 73 S. Ct. 891; *Arnold* v. *North Carolina*, 376 U. S. 773, —— L. Ed. ——, 84 S. Ct. 1033; and *Swain* v. *Alabama*, 380 U. S. 202, —— L. Ed. ——, —— S. Ct. ——.

tion in 1954 (R. 75); and that he could offer no explanation concerning why so few Negroes had been called to serve upon the grand and petit juries of Jasper County (R. 72) although he had no purpose to discriminate (R. 74, 75).

Another witness testified that he regularly attends Court sessions in Jasper County (R. 28) and that during eight or nine years he had observed only one Negro serving on the grand jury (R. 28, 29); and that the fact that a Negro served upon the grand jury which indicted petitioner was "unusual" (R. 30). There were no Negroes on the petit jury which tried and convicted petitioner although there were two Negroes on the panel from which the petit jury was selected (R. 32).

The record clearly reveals without dispute that for many years only one Negro has been called or served on the grand jury of Jasper County. That this one Negro served on the grand jury which returned the indictment against petitioner can hardly be contended as refutation of the strong evidence indicating exclusion (or limitation) of Negro citizens from service on the grand juries of Jasper County. See *Smith* v. *Texas,* 311 U. S. 128, 61 S. Ct. 164, 85 L. Ed. 84.

This Court has recognized a positive duty on the part of jury commissioners to select jurors without discrimination on the ground of race. Petitioner submits that the record here reflects a prima facie case of discrimination. Petitioner need not show ill will, evil motive or absence of good faith. But petitioner is entitled under the constitution to require that those who are trusted with jury selection shall not pursue a course of conduct that results in discrim-

ination in the selection of jurors on racial grounds. *Akins* v. *Texas*, 325 U. S. 398, 89 L. Ed. 1692, 65 S. Ct. 1276.

In *Cassell* v. *Texas*, 339 U. S. 282, 94 L. Ed. 839, 70 S. Ct. 629, this Court stated:

> "Jurymen should be selected as individuals, on the basis of individual qualification, and not as members of a race. . . . Proportional racial limitation is therefore forbidden. An accused is entitled to have the charges against him considered by a jury in the selection of which there has been neither inclusion or exclusion because of race."

It is significant here that the jury commission can identify a potential juror as white or Negro merely by observing his name except in a few cases where some white and Negro persons have the same name (R. 70). Thus the opportunity to make racial distinction is as apparent as was found to be the case in *Avery* v. *Georgia*, 345 U. S. 559. This includes the opportunity to maintain a "fair representation" (R. 75) after excluding some potential Negro jurors on the ground that they are "disqualified to begin with" (R. 75).[5]

---

[5] The disqualification in some instances was said to be that they "can't read and write barely, and yet have been registered" (R. 76). Literacy was not a prerequisite for service upon grand or petit juries in South Carolina at the time this case arose. *Article 5, Section 22, Constitution of South Carolina.* The only requirement was that the prospective juror be a qualified male elector which meant registered male elector. *State* v. *Rector*, 158 S. C. 212, 155 S. E. 385; *State* v. *Grant*, 199 S. C. 412, 19 S. E. (2d) 638; *State* v. *Waitus*, 224 S. C. 12, 77 S. E. (2d) 256. Prior to enactment of the 1965 Voting Rights Act (42 U. S. C., Section 1973) South Carolina law required that one seeking to register demonstrate his ability to read and write any Section of the Constitution

To summarize, it is submitted that a prima facie case of racial discrimination in the selection of grand and petit juries in Jasper County South Carolina has been set forth. As was stated by the Court in *Arnold* v. *North Carolina, supra*:

> "The situation here is quite like that in *Eubanks* v. *Louisiana,* 356 U. S. 584, 586, 78 S. Ct. 970, 973, 2 L. Ed. (2d) 991, where systematic exclusion of Negroes from grand jury duty was found.
>
> In that case:
>
> 'Although Negroes comprise about one-third of the population of the parish, the uncontradicted testimony of various witnesses established that only one Negro had been picked for grand jury duty within memory. . . . From 1936, when the Commission first began to include Negroes in the pool of potential jurors, until 1954, when petitioner was indicted, 36 grand juries were selected in the parish. Six more Negroes were included in each list submitted to the local judges. Yet, out of 432 jurors selected only the single Negro was chosen.' "

---

submitted to him . . . or can show that he owns and has paid taxes during the previous year on property in the state assessed at $300.00 or more. Article 2, Section 4, Constitution of South Carolina; Section 23-62, Code of Laws of South Carolina, 1962.

Conclusion

WHEREFORE, it is respectfully submitted that the judgment of the Supreme Court of South Carolina be reversed.

Respectfully submitted,

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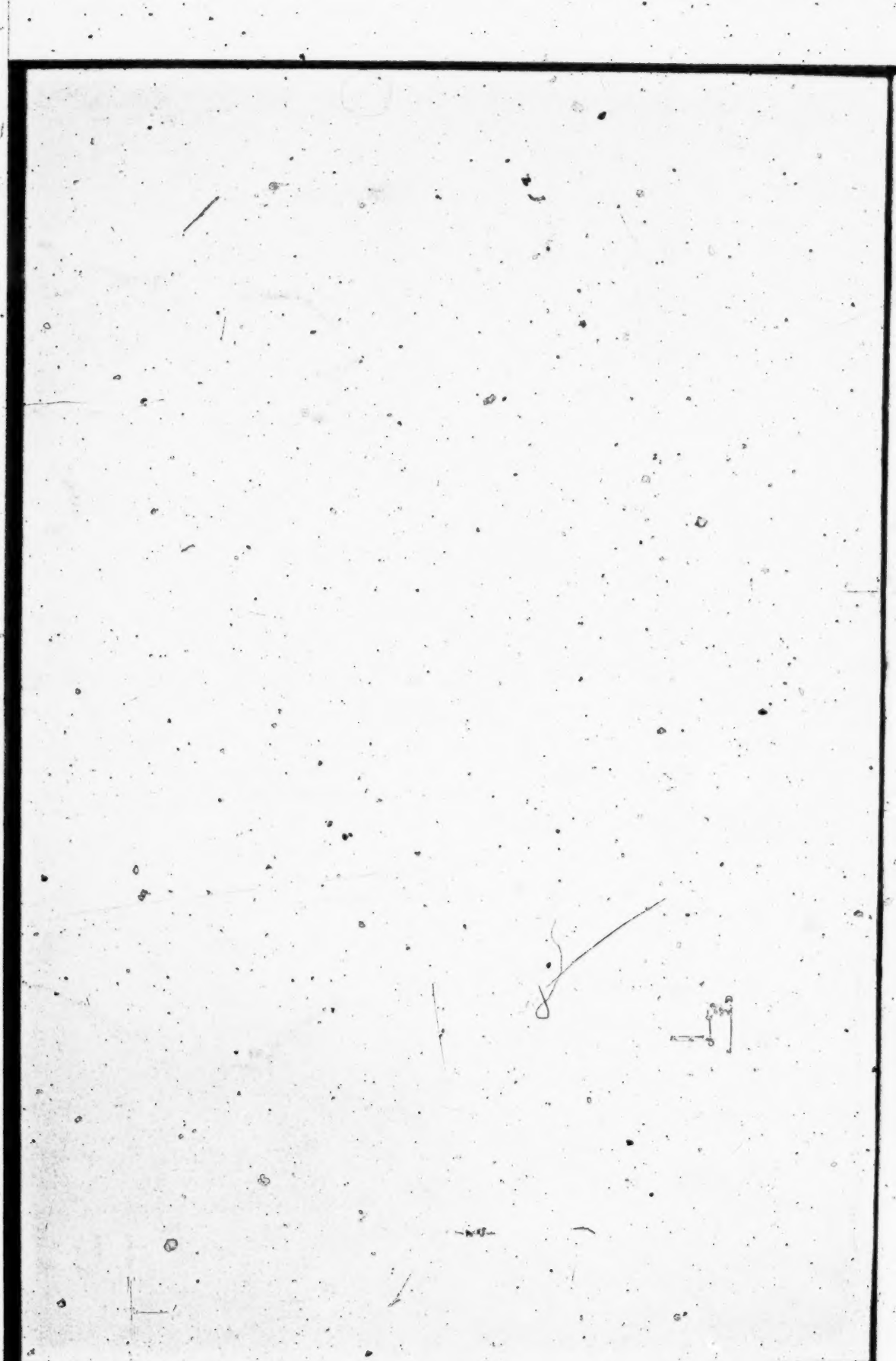

SUPREME COURT, U. S.
FEB 11 1967
JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1966

No. 647

LOUIS BOSTICK, PETITIONER,

versus

STATE OF SOUTH CAROLINA AND ELLIS C. MACDOUGALL, DIRECTOR, SOUTH CAROLINA BOARD OF CORRECTIONS, RESPONDENTS.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

BRIEF FOR RESPONDENTS

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Supreme Court of the United States

OCTOBER TERM, 1966

No. 647

LOUIS BOSTICK, PETITIONER,

versus

STATE OF SOUTH CAROLINA AND ELLIS C. MACDOUGALL, DIRECTOR, SOUTH CAROLINA BOARD OF CORRECTIONS, RESPONDENTS.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

BRIEF FOR RESPONDENTS

OPINION BELOW

The opinion of the Supreme Court of South Carolina is reported as *Bostick v. State*, 247 S. C. 22, 145 S. E. (2d) 439.

JURISDICTION

Petitioner asserts jurisdiction under 28 U. S. C. 1257 (3) to review the judgment of the Supreme Court of South Carolina which was entered November 30, 1965, with rehearing denied December 14, 1965. The petition for Writ of *Certiorari*, limited to the jury question, was granted October 10, 1966.

QUESTION PRESENTED

Has petitioner, a Negro, established that members of his race were systematically excluded from the grand jury which indicted and the petit jury which convicted him?

STATEMENT

The petitioner was indicted, tried, and convicted of the murder of Sheriff C. W. Floyd of Jasper County at the February 1962 Term of the Court of General Sessions, and sentenced to death on March 1, 1962. An appeal from that court was affirmed by the Supreme Court of South Carolina on July 10, 1963. *State v. Bostick,* 243 S. C. 14, 131 S. E. (2d) 841.

A petition for a Writ of *Habeas Corpus* was denied by the Richland County Court of Common Pleas on July 3, 1964, and subsequently affirmed by the Supreme Court of South Carolina on November 30, 1965, rehearing denied December 14, 1965. *Bostick v. State,* 247 S. C. 22, 145 S. E. (2d) 439.

ARGUMENT

The evidence affirmatively shows that there was no discrimination by race in the selection of the grand jury which indicted and the petit jury which convicted petitioner.

Respondents acknowledge the decisions of this Court setting forth the principle that a defendant is denied the equal protection of the laws guaranteed by the Fourteenth Amendment if he is indicted by a grand jury or convicted by a petit jury from which members of his race have been systematically excluded because of their race. No attempt will be made here to cite, quote or paraphrase the dozens of such cases. Instead, respondents will cite three of the most recent decisions, which will suffice to show, by comparison, that there has been no discrimination against petitioner. Respondents further challenge the references to the evidence in the statement and argument portions of peti-

tioner's brief, and will show that such references are incomplete, taken out of context, and even misquoted.

Respondents refer to the cases of *Eubanks v. Louisiana*, 356 U. S. 584, 2 L. Ed. (2d) 991, 78 S. Ct. 970; *Arnold v. North Carolina*, 376 U. S. 773, 12 L. Ed. (2d) 77, 84 S. Ct. 1033; and *Swain v. Alabama*, 380 U. S. 202, 13 L. Ed. (2d) 759, 85 S. Ct. 824. The petitioner cites all three, and quotes from *Eubanks* and *Arnold*.

In *Eubanks* only one Negro was selected for grand jury service over a period of 18 years, during which 36 grand juries were picked, and it appeared that this one was mistakenly thought to be white. The evidence was that Negroes composed about one-third of the population, and a substantial part of the Negro population was qualified for jury service.

In *Arnold* only one Negro was chosen for the grand jury over a 24-year period, although the tax lists contained 12,250 white persons and 4,819 Negroes, with 5,583 white men and 2,499 Negro men listed for poll tax.

In *Swain*, where Negro males constituted 26 per cent of all males over 21 years of age, from 10 to 15 per cent of grand and petit jury panels were Negroes; Negroes served on 80 per cent of the grand juries in numbers from one to three; and there was an average of 6 to 7 Negroes on petit jury venires in criminal cases, although no Negro had served on a petit jury for 13 years. The Court held this not to be total exclusion, token inclusion, or *prima facie* invidious discrimination, and affirmed the judgment, while *Eubanks* and *Arnold* were reversed.

The evidence in the instant case is that in 1962, at the time of petitioner's conviction, there were approximately 974 white and 256 Negro qualified male electors in Jasper County (R. 81, 82). Thus, Negroes constituted about 21 per cent of the males qualified for jury service. This testimony was by the Clerk of the Registration Board. Under

South Carolina law (Section 38-52, 1962 Code of Laws) jurors are selected from the qualified male electors. This section of the law has been in effect since 1902, and was held in *Franklin v. South Carolina,* 218 U. S. 161, 54 L. Ed. 980, 30 S. Ct. 640, not to be discriminatory in its requirement that jurors be of good moral character, deemed qualified to serve, of sound judgment, and free from all legal exceptions. The principal restriction on this section is the requirement that two from every three electors who possess the constitutional requirements for jury service be selected. *State v. Jackson,* 240 S. C. 238, 125 S. E. (2d) 474. At the time of *Franklin,* the requirement was one out of three.

The testimony of R. L. Sensenbach, a jury commissioner, is that there were probably less than a thousand names placed in the jury box in December 1961 (R. 65). This was just prior to petitioner's trial, and somewhat less than 1000 would be in compliance with *Jackson, supra.*

Petitioner's statement on page 3 of his brief that only one Negro has served on the grand jury of Jasper County is incorrect. The testimony of R. L. Sensenbach (R. 71) was that he could not recall observing more than one Negro at one time. A fair reading of his testimony will show that Negroes have usually sat on the grand jury and that Negroes have been drawn for petit jury service in numbers from one to six. (R. 72.) It must be kept in mind that no more than forty petit jurors are drawn in Jasper County for a term of Court, and that no more than twelve grand jurors are drawn, since six grand jurors are held over from the previous year. (Section 38-61.1 and Section 38-401, *et seq.,* 1962 Code of Laws.)

Mr. Sensenbach's assertion (R. 64) that he knows 90 per cent of the Negroes by name must be taken with a grain of salt. He is an elected official, and no doubt does know a great many voters. The significance of his boast must be kept in context. If he were in fact discriminating

by keeping Negroes off the grand and petit juries, would he admit that he knows 90 per cent of the Negro males by name? It would appear that just the opposite would be true.

Jasper County has as many as six terms of Court each year (R. 67). Mr. Sensenbach was asked about the presence of Negroes on the grand and petit juries for the February term of the years 1958, 1959, 1960, and 1961 by petitioner. (R. 66, 67, 68.) He identified one Negro definitely and one possibly on the 1959 list (R. 67). He was not asked about the other terms of Court held during the year, and in fact was not asked by petitioner about the specific February 1962 term, during which he was convicted. It is agreed that one Negro was on the grand jury and two Negroes were on the petit jury venire.

This substantially meets the test of *Swain, supra.* It obviously is not exclusion, token inclusion, or invidious discrimination. Since it is proper for the term in question, what may have occurred in the past is immaterial. *Brown v. Allen,* 344 U. S. 443, 97 L. Ed. 469, 73 S. Ct. 397.

The testimony of Miss Evelyn Spivey, another member of the jury commission, is clear that an effort is made to secure two thirds of the qualified male electors without regard to race, and that there are substantial numbers of names of Negroes in the jury box. (R. 102-105.) Her testimony is succinct and clear and credible. In addition, it clears up, under petitioner's cross examination, the claim that a jury had been dismissed and an indictment quashed in 1954. Her testimony is that the indictment was quashed because of a question concerning a holdover grand juror, and had no connection with racial discrimination.

Petitioner's contention that some Negroes are disqualified for illiteracy is without merit, since whites are disqualified on the same basis. (R. 76.) Any disqualifications for illiteracy, white or Negro, are fully justified by the

discretion vested in the jury commission under Section 38-52, 1962 Code of Laws, and the decision of *Franklin v. South Carolina, supra.*

CONCLUSION

Respondents respectfully submit that the Writ of Certiorari should be dismissed as improvidently granted and the judgment of the Supreme Court of South Carolina affirmed.

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